Supreme Court, U.S.
FILED

03 121 JUL 22 2003

OFFICE OF THE CLERK

No. 03-

IN THE

Supreme Court of the United States

CM TAX EQUALIZATION FOUNDATION, INC., *et al.*,

Petitioners,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

TERESA WYNN ROSEBOROUGH
Counsel of Record
JASON C. KIRKHAM
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Counsel for Petitioners

106 pp

QUESTIONS PRESENTED

1. In 1982, pursuant to a unique "local constitutional amendment" Muscogee County, Georgia, froze for ad valorem property tax purposes the assessed value of owner-occupied homes in the County. Do the more stringent requirements for repealing this unique local constitutional amendment violate the Fourteenth Amendment?

2. Does the Georgia Constitution violate the Equal Protection Clause by arbitrarily and capriciously exempting Muscogee County from its otherwise applicable provisions requiring that comparable properties be taxed uniformly based on their fair market value?

3. Does the valuation freeze violate the Privileges and Immunities Clause and the constitutionally protected Right to Travel?

4. Does the valuation freeze violate basic principles of Equal Protection as enunciated by this Court in *Allegheny Pittsburgh Coal Co.* v. *County Commission*?

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioners state that the CM Tax Equalization Foundation, Inc. is a non-profit corporation.

PARTIES TO THE PROCEEDINGS

Under the provisions of a "local constitutional amendment" effective only in Muscogee County, Georgia, the value of a home in the County is frozen for ad valorem tax purposes at its 1983 value or its value when last sold, whichever is latest.

Petitioner CM Tax Equalization Foundation, Inc., is a private, non-profit corporation established and supported by a group of Muscogee County citizens concerned by the inequities inherent in their county's property valuation freeze. The individual Petitioners are Georgia residents who represent a cross-section of the homeowners and renters burdened by the valuation freeze.

Respondent Columbus-Muscogee County Consolidated Government is the municipal government governed by the valuation freeze. Respondent Muscogee County Board of Tax Assessors is responsible for determining the taxability of property for ad valorem tax purposes, and for the appraisal, assessment, and equalization of all assessments within the County. Respondent Lula Lunsford Huff, in her official capacity as Muscogee County Tax Commissioner, is responsible for performing all functions related to billing, collecting, disbursing, and accounting for ad valorem property taxes collected in the County. Respondent Muscogee County Board of Equalization is responsible for hearing and adjudicating administrative appeals as to values, denials of claimed exemptions, and taxability of property values and assessments made by the Board of Tax Assessors.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

RULE 29.6 STATEMENT ii

PARTIES TO THE PROCEEDINGS iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOKED 1

STATEMENT OF THE CASE 1

STATEMENT 3

I. The Valuation Freeze and Pertinent State Constitutional Provisions 3

II. The Enactment of the Freeze 4

III. The Effects of the Valuation Freeze 6

IV. Proceedings Below 7

REASONS FOR GRANTING THE WRIT 8

I. By Imposing More Stringent Standards for Repealing an LCA Than Were Required for Continuing It in Effect, the Georgia Constitution Violates the Fourteenth Amendment 10

II. The Georgia Constitution Violates the Equal Protection Clause by Arbitrarily and Capriciously Denying Residents of Muscogee County Rights Provided to Other Georgia Citizens. 15

III. The Valuation Freeze Violates the Privileges and Immunities Clause and the Right to Travel 17

A. The Freeze Violates the Privileges and Immunities Clause 18

B. The Freeze Violates the Right to Travel 20

C. The Freeze Is Unconstitutional Even Though It Applies to Those Who Move into Muscogee County from Elsewhere in Georgia 22

IV. The Valuation Freeze Violates Basic Principles of Equal Protection as Enunciated by This Court in *Allegheny Pittsburgh Coal Co.* v. *County Commission* 24

A. *Allegheny* is Dispositive 25

B. The Georgia Supreme Court Erred in Relying on *Nordlinger* v. *Hahn* 26

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

In re 1975 Tax Assessments Against Oneida Coal Co., 360 S.E.2d 560 (W. Va. 1987) 27

Allegheny Pittsburgh Coal Co. v. *County Comm'n of Webster County*, 488 U.S. 336 (1989) 25, 26

Anderson v. *Celebrezze*, 460 U.S. 780 (1983) 14

Attorney General v. *Soto-Lopez.*, 476 U.S. 898 (1986) 18, 20

Benson-Corwin, Inc. v. *Cobb County Sch. Dist.*, 236 S.E.2d 361 (Ga. 1977) 15

Burdick v. *Takushi*, 504 U.S. 428 (1992) 10

Bush v. *Gore*, 531 U.S. 98 (2000) 10, 16

California Democratic Party v. *Jones*, 530 U.S. 567 (2000) 10

Chalker v. *Birmingham & Northwestern Ry. Co.*, 249 U.S. 522 (1919) 23, 24

Cipriano v. *City of Houma*, 395 U.S. 701 (1969) 10

City of Cleburne v. *Cleburne Living Ctr.*, 473 U.S. 432 (1985) 11

Columbus-Muscogee County Consol. Gov't v. *CM Tax Equalization Found., Inc.*, 579 S.E.2d 200 (Ga. 2003) 21

Davis v. *Bandemer*, 478 U.S. 109 (1986) 11

Hillside Dairy Inc. v. *Lyons*, __U.S.__, 123 S. Ct. 2142 (2003) 24

Hunter v. *Erickson*, 393 U.S. 385 (1969) 11

In re Initiative Petition No. 362 State Question 669, 899 P.2d 1145 (Okla. 1995) 22

Kramer v. *Union Free Sch. Dist.*, 395 U.S. 621 (1969) 10

Lunding v. *N.Y. Tax Appeals Tribunal*, 522 U.S. 287(1998) 18, 19

Memorial Hosp. v. *Maricopa County*, 415 U.S. 250 (1974) 22

Nordlinger v. *Hahn*, 505 U.S. 1 (1992) 17, 26

Norman v. *Reed*, *502* U.S. 279 (1992) 10, 14

Reynolds v. *Sims*, 377 U.S. 533 (1964) 10

Roberts v. *Suttles*, 91 S.E.2d 32 (Ga. 1956) 5

Roosevelt v. *Montana Dep't of Revenue*, 975 P.2d 295 (Mont. 1999) 29

Saenz v. *Roe*, 526 U.S. 489 (1999) 19

Sims v. *Town of Baldin*, 290 S.E.2d 433 (Ga. 1982) 5

United Bldg. & Constr. Trades Council v. *Mayor & Council of Camden*, 465 U.S. 208 (1984) 18, 19 23

Vance v. *Bradley*, 440 U.S. 93 *(1979)* 11

Washington v. *Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982) 11

Zobel v. *Williams*, 457 U.S. 55 (1982) 18, 19, 20

STATUTES

U.S. Const. art. IV, § 2, cl. 1 18

Ga. Const. art. VII, § 1, ¶ 3(a) 4

Ga. Const. art. VIII, § 6, ¶ 1(a) 4, 15

Ga. Const. art. X, § 1, ¶ 1 ..... 5, 15

Ga. Const. art. XI, § 1, ¶ 4(a) 6

Ga. Const. art. XI, § 1, ¶ 4(b) 6

Ga. Const. of 1976 art. XII, § 1, ¶ 1 4

1980 Ga. Laws 2009 28

1986 Ga. Laws 3800 6

1991 Ga. Laws 4255 6

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia in this case.

OPINIONS BELOW

The Muscogee County Superior Court's Order Granting Plaintiffs' Motion For Summary Judgment (App. 13a-31a) is unpublished. The opinion of the Georgia Supreme Court reversing the trial court (App. 1a-12a) is reported at 579 S.E.2d 200 (Ga. 2003).

JURISDICTION

The judgment of the Georgia Supreme Court was entered March 24, 2003. (App. 1a.) By order dated June 18, 2003, Associate Justice Anthony M. Kennedy extended the time to file this Petition until July 22, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOKED

The following constitutional provisions are included in the Appendix:

Ga. L. 1981, pp. 1926-27; Ga. Const. art. VII, § 1, ¶ 3(a); Ga. Const. art. VIII, § 6, ¶ 1(a); Ga. Const. art. X, § 1, ¶ 1; U.S. Const. art. IV, § 2, cl. 1; U.S. Const. art. IV, § 4; U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This petition presents questions regarding the constitutionality of a "local constitutional amendment" that allows a single Georgia county to impose vastly different property taxes on comparable property, notwithstanding other provisions of the Georgia Constitution that require ad valorem taxes to be

assessed uniformly throughout the county based on the property's fair market value. Only Muscogee County's citizens are subject to this inequity. This unique provision is shielded from normal political attack – although it took *only* a local act of the state legislature to continue the freeze after local constitutional amendments were abolished, the repeal of the freeze would require *both* the passage of an act by the state legislature *and* a majority vote of the County's residents. The exemption of Muscogee County from otherwise applicable constitutional protections and the stringent requirements for repealing the valuation freeze violate the Fourteenth Amendment to the United States Constitution.

Furthermore, because the freeze imposes a disproportionate share of Muscogee County's tax burden on out-of-state newcomers, the freeze violates the Privileges and Immunities Clause and the constitutionally protected right to travel. Finally, the freeze (coupled with the effects of a separate "inflation adjustment" adopted by the County from 1982 to 1992) results in such disparities in taxation on similarly situated properties (up to 4000%) as to violate the Equal Protection Clause.

Seeking relief from the inequities caused by the County's valuation freeze, Petitioners filed an action in the Superior Court of Muscogee County, Georgia, alleging that the valuation freeze is unconstitutional under the United States and Georgia Constitutions. As is discussed further below, both the trial court and the Georgia Supreme Court addressed Petitioners' claims under the United States Constitution. Both the trial

court's order and the Georgia Supreme Court's opinion are included in Petitioners' Appendix.

STATEMENT

I. The Valuation Freeze and Pertinent State Constitutional Provisions

Muscogee County, Georgia ("the County") has frozen, for ad valorem property tax purposes, the assessed value of owner-occupied residential property in the County. Rather than basing property taxes on current market value (as is otherwise required by Georgia's laws and constitution), the County taxes owner-occupied property based on the home's value on the latter of three dates: (1) January 1, 1983, (2) January 1 of the first year in which a homestead exemption[1] is claimed and allowed, or (3) January 1 of the year following the last change in ownership. (App. 15a.) Under the valuation freeze, a property's frozen value remains the assessed value until the property is sold or transferred at death to someone other than a spouse. (*Id.*) Only then, when in the possession of the new homeowner, will the property be revalued at its current fair market value. (*Id.*) In this "welcome stranger" system, recent home purchasers in Muscogee County – including those who move into Muscogee County from out-of-state ("newcomers") – find themselves paying remarkably higher property taxes, based only on when they acquired their homes. The freeze likewise burdens people who rent property

[1] Under Georgia law, property owners meeting certain qualifications can exempt from taxation a portion of the value of their homes.

because rental property is exempted from the freeze and the resulting higher taxes are passed on to renters through increased rents. (*Id.* 20a.) The valuation freeze does not allow for consideration of financial means, ability to pay, age, disability, or hardship. Date of purchase counts for everything.

Imposing the freeze required a constitutional amendment (as opposed to a statute) because two provisions of Georgia's Constitution require counties to assess taxes uniformly based on an individual property's fair market value. Ga. Const. art. VII, § 1, ¶ 3(a) (known as the "Uniformity Clause") ("all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."); Ga. Const. art. VIII, § 6, ¶ 1(a) ("assessed value of all taxable property within the territory served by [the] school system.").

II. The Enactment of the Freeze

Because of these constitutional provisions, the County's only hope for implementing a valuation freeze was to use the long-discredited and now-defunct "local constitutional amendment" ("LCA") process. When the freeze was enacted in 1982, Georgia's Constitution allowed for constitutional amendments applicable to only specific political subdivisions. Ga. Const. of 1976, art. XII, § 1, ¶ 1. These local constitutional amendments could become a part of Georgia's Constitution if approved by two-thirds of the members of each house of Georgia's General Assembly and a majority of the voters in the affected political subdivision. *Id.*

Recognizing the difficulty created by having a myriad of constitutional amendments applicable only to particular localities,[2] Georgia adopted a new constitution, which became effective in 1983, that specifically forbade any new local constitutional amendments. Ga. Const. art. X, § 1, ¶ 1.

The valuation freeze was approved by the County's voters in the same general election that approved the new constitution forbidding any future local constitutional amendments. Thus, by enacting the freeze just before the new constitution became effective, the County ensured that it would be the only political subdivision in Georgia that would have an LCA specifically allowing it to violate Georgia's Uniformity Clause.

The 1983 Constitution also phased out then-existing LCAs by July 1, 1997, with a limited exception: then existing LCAs could be continued in effect beyond July 1, 1987, by local act of the General Assembly (subject to a local referendum if desired by the legislature) or by an ordinance adopted by the local governing authority in the affected political

---

[2] The Georgia Supreme Court stated in 1982:

> The tendency to amend the Georgia Constitution by amendments which apply solely to an isolated political subdivision of the State has met considerable criticism. It has been calculated that between 1947 and 1967, the Georgia Constitution was amended 549 times; 466 of these amendments had local application only.

Sims v. *Town of Baldin*, 290 S.E.2d 433, 435 (Ga. 1982).

In an earlier opinion, the court declared that "[w]e agree that the fundamental law of our State, the Constitution, by this method is being undermined and destroyed." *Roberts* v. *Suttles*, 91 S.E.2d 32, 34 (Ga. 1956).

subdivision. Ga. Const. art. XI, § 1, ¶ 4(a). In the case of the County's valuation freeze, the General Assembly passed a local act that continued the LCA in effect. *See* 1986 Ga. L. 3800.

Because the valuation freeze is a part of Georgia's Constitution, it can be repealed only by a local act of the General Assembly affirmed by a majority of the locality's qualified voters. Ga. Const. art. XI, § 1, ¶ 4(b). Whereas continuing the freeze in effect required no more than a local ordinance or a local act of the state legislature (with or without a local referendum), repealing the valuation freeze is conditioned on *both* a local act and approval of a majority of the county's voters. The effect of this difference became apparent in 1991, when the General Assembly passed a local act authorizing a referendum on whether the valuation freeze should be repealed. *See* 1991 Ga. L. 4255. Because repealing the freeze failed to garner a majority of the County's voters, the freeze remains in effect. (App. 35a-36a.)

III. The Effects of the Valuation Freeze

The valuation freeze produces glaring inequities in taxation among owners of comparably-valued homes in the County. For the year 2000, approximately 1773 homesteads in the County had a fair market value for ad valorem tax purposes of $75,000 (plus or minus 2.5%). Due to the valuation freeze and the County's Standard Homestead Exemption, 27 of these homeowners owed no County ad valorem tax at all; more than 110 other homes owed $110 or less; while approximately 840 homes of an approximate value of $75,000 were taxed

on the basis of their current fair market value and had a County ad valorem tax bill averaging $660. (App. 55a.)

At the other end of the economic scale, a home with a fair market value of $289,760 was subjected to County ad valorem tax of $1,226.94, while another home valued at $122,175 (or, less than half the former) was subjected to a County ad valorem tax of $1,210.26, approximately the same as the other (App. 60a-61a.); and a home currently valued at $451,517 was taxed by the County at $2,157.24, while another with a current value of $193,660 was subjected to a tax of $1770.10. (*Id.*)

IV. Proceedings Below

On June 24, 2002, the trial court granted summary judgment in Petitioners' favor and ruled that the valuation freeze violates the Georgia and United States Constitutions. (App. 13a-31a.) Although Respondents argued that the valuation freeze survived equal protection scrutiny under this Court's holding in *Nordlinger v. Hahn*, 505 U.S. 1 (1992), as a device for protecting existing homeowners from inflation, the court concluded that "[a]s an inflation control measure [the freeze] is far too extreme and too suspect to survive constitutional review." (App. 24a.) The trial court also found that the freeze violated the constitutionally protected right to travel because it "places newcomers in second-class status compared to the earlier arrivals who will generally constitute the majority of taxpayers." (App. 29a.) Finally, the trial court held that the freeze violated the Georgia Constitution's uniformity and equal protection clauses. (App. 25a.)

Respondents appealed to the Georgia Supreme Court. On March 24, 2003, the Georgia Supreme Court reversed the trial court's grant of summary judgment to Petitioners. (App. 1a-12a.) Although the court tacitly recognized that the LCA violated the Uniformity Clause, the court held that as a later amendment to Georgia's Constitution, the valuation freeze trumped any contrary provisions in the state constitution. The court also rejected Petitioners' federal constitutional challenges. (*Id.*)

REASONS FOR GRANTING THE WRIT

The decision of the court below threatens to wreak havoc with tax and other legal regimes throughout the nation. First, this Court has repeatedly reaffirmed that the Fourteenth Amendment establishes a right of equal access to the political process. Lower courts have struggled, however, with the precise contours of that right. The court below, for example, approved a constitutional system that stifles political challenges to the freeze by making the freeze more difficult to remove than it was to keep in effect. Furthermore, the freeze is insulated from change because its burden is felt by an ever present (but ever changing) group of newly arrived home-owners who, by definition, will always lack the political ability to end the valuation freeze. This holding does not square with the consistent rulings of this Court and demonstrates the importance of providing further guidance to lower courts.

Second, the Georgia Supreme Court's decision implicates important constitutional issues regarding the states' abilities to exempt particular localities from

constitutional protections that would otherwise apply. In essence, the Georgia Supreme Court held that a state is free to declare that its own constitutional protections stop when someone enters a particular municipality, county, or other political subdivision. Changing constitutional rules at the county line is clearly an equal protection violation.

Third, the valuation freeze violates the Privileges and Immunities Clause and the right to travel as well as the Equal Protection Clause. The Georgia Supreme Court is not alone in failing to follow this Court's Privileges and Immunities and right to travel doctrine; the Georgia Supreme Court explicitly followed a decision by the Supreme Court of Oklahoma. This Court itself signaled the importance of this doctrinal question by specifically reserving the question in *Hillside Dairy Inc.* v. *Lyons,* __ U.S. __, 123 S. Ct. 2142 (2003).

Fourth, petitioners do not question the Georgia Supreme Court's interpretation of Georgia law or Georgia's constitution. They do, however, challenge the permissibility, under the United States Constitution, of a state constitutional amendment, insulated from political challenges, and made applicable to only one county.

I. By Imposing More Stringent Standards for Repealing an LCA Than Were Required for Continuing It in Effect, the Georgia Constitution Violates the Fourteenth Amendment.

The Fourteenth Amendment forbids states to manipulate governmental structures to deny members of an identifiable group the opportunity to participate equally in the political process. This Court has consistently evaluated state laws that operate to impose such a denial under a standard of heightened scrutiny. For example, a state law that disenfranchises a particular group is reviewed under strict scrutiny. *See Kramer* v. *Union Free Sch. Dist.*, 395 U.S. 621, 626 (1969); *Cipriano* v. *City of Houma*, 395 U.S. 701, 706 (1969). The Court also applies strict scrutiny to assess population variations in electoral districts, *see, e.g., Reynolds* v. *Sims*, 377 U.S. 533 (1964), and to the possibility that ballots might be treated differently during a recount. *See Bush* v. *Gore*, 531 U.S. 98 (2000). The Court also reviews with heightened scrutiny state laws that limit the ballot access of small parties or unpopular political groups. *See Norman* v. *Reed*, 502 U.S. 279 (1992); *Burdick* v. *Takushi*, 504 U.S. 428 (1992); *California Democratic Party* v. *Jones*, 530 U.S. 567 (2000).

The reason for examining more closely a denial of equal opportunity to participate in the political process is simple: the premise underlying the Court's usual, deferential standard of review fails to hold in such cases. The justification for applying a mere rationality test is that "even improvident decisions will

eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *see also Davis* v. *Bandemer*, 478 U.S. 109, 152 (1986) (O'Connor, J., concurring). Where, as in this case, a state discriminates against a particular group in the way the state structures its electoral and other political processes, the democratic process ceases to function as a reliable safeguard against oppressive exercises of state power. *See City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (such a measure "is unlikely to be soon rectified by legislative means.").

This Court applied these principles in the closely analogous case of *Hunter* v. *Erickson*, 393 U.S. 385 (1969). There the citizens of Akron, Ohio amended their city charter to forbid the city council to enact any fair housing ordinance unless the ordinance was approved by a subsequent referendum. The Court held the charter amendment invalid because it targeted legislation that would favor identifiable groups – primarily racial and religious minorities – and subjected it to more onerous requirements. The Court identified the constitutional defect of the Akron charter amendment: "[T]he state may no more disadvantage any particular group by making it more difficult to enact legislation in its behalf than it may dilute any person's vote or give any group a smaller representation than another of comparable size." *Id.* at 393 (citing *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Avery* v. *Midland County*, 390 U.S. 474 (1968)); *see also Washington* v. *Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982).

The Georgia LCA violates the constitutional principle of equal access to the political process. Through that process, the State of Georgia adopted as part of its Constitution a tax assessment system that heavily discriminates against an identifiable group, recent homebuyers. The State also ratified, at the same election, a new Constitution that repealed the LCA process and, with it, the possibility that recent purchasers could use the same process to redress the discriminatory tax burden.

Superficially, the Georgia Constitution appears to remedy this discrimination by providing that the discriminatory Muscogee tax assessment artifice would also be repealed. Any appearance of constitutional compliance is illusory, however. On abolishing the LCA mechanism, the Georgia Constitution also provided that the discriminatory Muscogee system, along with other extant LCAs, could remain in force if approved by a local act passed by the Georgia legislature (with or without a local referendum).[3]

The recourse that the Georgia Constitution provides recent homebuyers in Muscogee County adds a burdensome extra step. To repeal the Columbus-Muscogee LCA, recent homebuyers must first prevail upon the Georgia General Assembly to enact a local bill approving the repeal. Then, the repeal must be approved at a local referendum. This exclusive method of repealing the LCA is more burdensome than either of the options available to Muscogee County's entrenched

---

[3] An LCA could also be continued if approved by a local ordinance.

majority to retain the LCA. The effects are not just theoretical; the Georgia legislature actually passed a local act authorizing the repeal of the Muscogee LCA, but the required referendum failed when Muscogee County's entrenched homeowners voted it down.

Georgia's LCA process is complex, but one feature is clear: the process discriminates against identifiable groups, such as recent homebuyers in Muscogee County, imposing a significant disadvantage on the ability of such groups to participate effectively in the political process. The Muscogee LCA is especially pernicious. It singles out a group that lacks political power today and that is peculiarly unlikely to emerge from that status. As to this case, the trial court specifically agreed and found that the class of recent home purchasers is peculiarly disabled from overcoming its status as a disfavored minority. (App. 29a) (finding that "earlier arrivals will generally constitute the majority of taxpayers"). Because the tax assessment scheme bestows its benefits and imposes its burdens based on length of residency, the identity of recent as opposed to established homebuyers will fluctuate. Over time, recent homebuyers will either move away or become long-time residents. In either event, they will cease to have an economic interest in repealing the discriminatory tax burden. Winning such a political victory requires a sustained investment of political participation, which is not apt to be forthcoming from a small class whose membership is constantly changing.

This unequal treatment of an identifiable group with respect to the ability of that group to participate in

the political process cannot satisfy the heightened scrutiny this Court has consistently applied to such laws. As this Court has repeatedly noted, the level of scrutiny is determined by the degree to which the State has infringed on the ability of a minority group to participate meaningfully in the political process. As the Court stated in *Norman* v. *Reed*, "we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation ...." 502 U.S. 279, 288-89 (1992). *See also Anderson* v. *Celebrezze*, 460 U.S. 780, 789 (1983).

Petitioners suffer under a severe restriction on their access to the democratic process as a means of redressing the discriminatory Muscogee tax assessment scheme. This Court "require[s] any severe restriction to be narrowly drawn to advance a state interest of compelling importance." *Norman*, 502 U.S. at 289 (citing *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 184, 186 (1979)). Nevertheless, there is no legitimate state interest in imposing an additional hurdle on recent homebuyers to redress Muscogee's destructive tax artifice. As such, the complex LCA system by which the state authorizes the Muscogee tax assessment scheme fails to represent even a sufficiently reasonable means of advancing a legitimate state interest.

II. The Georgia Constitution Violates the Equal Protection Clause by Arbitrarily and Capriciously Denying Residents of Muscogee County Rights Provided to Other Georgia Citizens.

Georgia's Uniformity Clause prevents a taxing authority from "freez[ing] the assessed value of . . . property at an amount obviously below its fair market value." *Benson-Corwin, Inc.* v. *Cobb County Sch. Dist.*, 236 S.E.2d 361, 362 (Ga. 1977). Likewise, Georgia's constitution requires counties to impose a school tax "upon the assessed value of all taxable property" within the school district. Ga. Const. art. VIII, § 6, ¶ 1(a). As with the Uniformity Clause, this provision requires that property tax assessments be based on the property's fair market value. *Benson-Corwin. Inc.*, 236 S.E.2d at 362.

Despite the clear conflict between these provisions of the Georgia Constitution and the valuation freeze, the Georgia Supreme Court held that the valuation freeze "is valid despite any conflict with the uniformity clause" because it is a "subsequent amendment to the uniformity clause." (App. 4a.) But because Georgia's present constitution prohibits further local constitutional amendments, *see* Ga. Const. art. X, § 1, ¶ 1, no other county can have this authority. In other words, Georgia's Constitution grants to one county – and only one county – a complete exemption from two otherwise applicable constitutional provisions that would have prevented the County from enacting the freeze. It is as if upon entering Muscogee County,

these two provisions of Georgia's Constitution no longer apply.

Regardless of the defensibility of the Georgia Supreme Court's interpretation of Georgia law, to end the protections of Georgia's Constitution at the borders of Muscogee County fails to satisfy the "rudimentary requirements of equal treatment and fundamental fairness." *Bush* v. *Gore*, 531 U.S. 98, 109 (2000). Having granted Georgia's citizens the right to have their property taxes based on the fair market value of their property, the State cannot later arbitrarily and capriciously exempt residents of one particular county from that protection. *See id.* at 104-05 ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Even if freezing property tax valuations would otherwise be permissible, this Court's decision in *Bush* v. *Gore* prevents Georgia from allowing only one county to impose such a system.

There is no rational basis for Georgia's decision to deprive one group of citizens the constitutional protections that benefit every other citizen in Georgia. No special circumstances justify treating Muscogee County differently from every other county in Georgia. The inflation statistics cited by the County – which report on inflation throughout the urban south when the freeze was enacted (*see* App. 15a) – cannot support a one-county exemption from Georgia's otherwise generally applicable constitutional protections. Likewise, that Georgia's 1983 Constitution prevented more counties from enacting similar valuation freezes

merely begs the question why Muscogee County should be treated differently.

The Georgia Supreme Court's decision to reverse the trial court overlooks the fact that Georgia has – for no justifiable reason – decided to allow one county to exempt itself from otherwise applicable constitutional provisions. Georgia's decision to do so is arbitrary, capricious, and without justification. This Court should accordingly grant the petition to address whether a state can, consistent with equal protection, exempt a particular county from constitutional protections granted to all others in the state.

III. The Valuation Freeze Violates the Privileges and Immunities Clause and the Right to Travel.

Granting certiorari will give this Court an opportunity to clarify an issue mentioned, but not addressed, in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992), which upheld under rational basis scrutiny an equal protection challenge to California's Proposition 13. Because there was no evidence that the plaintiff in *Nordlinger* had moved to California from out-of-state, the Court did not there address whether so-called "acquisition value" tax systems violate the Privileges and Immunities Clause or the right to travel by causing newly arrived residents to pay more in property taxes than do similarly situated long-term residents. *See Nordlinger*, 505 U.S. at 10-11. Unlike in *Nordlinger*, Petitioners include individuals who pay higher taxes because they moved into Muscogee County from out of state after enactment of the freeze.

The Privileges and Immunities Clause and the right to travel share common history and purpose. *See Zobel* v. *Williams*, 457 U.S. 55, 78-81 (1982) ("History, therefore, supports assessment of Alaska's scheme, as well as other infringements of the right to travel, under the Privileges and Immunities Clause.") (O'Connor, J., concurring). Both prevent states from favoring their own residents over newcomers. *See Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 903 (1986) (the right to travel prohibits "the unequal distribution of rights and benefits among otherwise qualified bona fide residents."); *United Bldg. & Constr. Trades Council* v. *Mayor & Council of Camden*, 465 U.S. 208, 215-16 (1984) (the Privileges and Immunities Clause was "designed to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages and resulting from citizenship in those State are concerned") (internal quotation marks omitted). The tax freeze violates both these provisions by charging higher taxes to those who moved into Muscogee County from out-of-state.

A. The Freeze Violates the Privileges and Immunities Clause.

The Privileges and Immunities Clause provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. The object of the clause is to "'strongly ... constitute the citizens of the United States one people, by plac[ing] the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.'" *Lunding* v.

N.Y. Tax Appeals Tribunal, 522 U.S. 287, 296 (1998) (quoting *Paul* v. *Virginia*, 8 Wall. 168, 180, (1868)) (alteration in original).

The Privileges and Immunities Clause protects "those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity." *Camden*, 465 U.S. at 218 (quoting *Baldwin* v. *Montana Fish & Game Comm'n*, 436 U.S. 371, 383 (1978)). If a state law burden's such rights, the state must show that there is "substantial reason" for the difference in treatment. *Id.* at 222.

The valuation freeze burdens several rights protected by the Privileges and Immunities Clause, including the right to equal treatment in the imposition of taxes, *see Lunding*, 522 U.S. at 296 (1998), the right of outsiders to establish residency in Muscogee County, and the right of outsiders to purchase a home in Muscogee County. *See Zobel*, 457 U.S. at 76-77 ("It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State.") (O'Connor, J., concurring).

Nor can Respondents put forward a substantial interest for requiring newcomers to pay more in property taxes than long-time county residents. This Court's "cases have not identified any acceptable reason for qualifying the protection afforded by the Clause for 'the citizen of State A who ventures into State B to settle there and establish a home.'" *Saenz v. Roe*, 526 U.S. 489, 502 (1999) (quoting *Zobel*, 457 U.S. at 74 (O'Connor, J., concurring)). Moreover, as discussed below, the supposed benefits of the valuation freeze – protection from inflation and certainty

regarding the amount of taxes that will be assessed – are illusory. Because the valuation freeze does not in any way limit the millage rate that the County can impose, it does not provide certainty regarding the amount of taxation. On the contrary, the only thing that the valuation freeze guarantees is disparity – whatever the tax burden is, it will be disproportionately imposed on newcomers and renters.

B. The Freeze Violates the Right to Travel.

The right to travel prohibits "state laws that, by classifying residents according to the time they established residence, result[] in the unequal distribution of rights and benefits among otherwise qualified bona fide residents." *Soto-Lopez*, 476 U.S. at 903. "A state law implicates the right to travel when it actually deters such travel, when impending travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right." *Id.* (internal citations and quotations omitted).

This Court has invalidated, as violations of the right to travel, state laws that create permanent distinctions among residents based on the length of their residence in a state. *See Zobel*, 457 U.S. at 63-64. Here, the valuation freeze necessarily classifies Muscogee County residents differently for ad valorem tax purposes based solely on when they moved into the County. For example, as a result of the valuation freeze, Petitioners Ron and Faye Sherrill, who moved from Oklahoma to Muscogee County in 1998, pay higher taxes than do long-time County residents living in similar homes. (App. 42a.) In fact, any non-Georgia

resident who buys a home in Muscogee County will pay higher taxes than do current homeowners. By conditioning newcomers' tax burden on the amount of time they have owned a home in Muscogee County, the valuation freeze unconstitutionally infringes on the right to travel.

The Georgia Supreme Court incorrectly held that the valuation freeze does not impermissibly burden the right to travel because it does not include a cut-off date or an explicit residence requirement. *Columbus-Muscogee County Consol. Gov't* v. *CM Tax Equalization Found., Inc.*, 579 S.E.2d 200, 204 (Ga. 2003). This holding is wrong. The right to travel does more than prohibit state laws that impose explicit residency requirements. On the contrary, *Zobel* demonstrates that laws such as the valuation freeze that use length of residency, even without a provision that functions like a cut-off date, when determining the amount of a state provided benefit (or state imposed burden) violate the right to travel.

This case presents an even more invidious form of discrimination against newcomers than did *Zobel*. Whereas *Zobel* dealt with a state-provided *benefit*, the valuation freeze imposes a greater *burden* (in the form of higher taxes) on those who have moved into Muscogee County. Allowing Muscogee County to maintain such a "welcome stranger" system would profoundly burden the free movement of people between states that the Constitution was designed to protect.

C. The Freeze Is Unconstitutional Even Though It Applies to Those Who Move into Muscogee County from Elsewhere in Georgia.

Relying on the Oklahoma Supreme Court's opinion in *In re Initiative Petition No. 362 State Question 669*, 899 P.2d 1145, 1152 (Okla. 1995), the Georgia Supreme Court held that the valuation freeze is permissible because it affects all new home purchasers, regardless whether they moved into the County from out-of-state. (App. 11a-12a.) This Court, however, rejected this very same argument when it struck down an Arizona statute that conditioned counties' obligations to provide indigent hospital care to recipients having lived in the county for at least a year. *Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250 (1974). In that case, the county argued that the statute was nonetheless constitutional because it penalized all newcomers to the county, regardless whether they had moved intrastate or interstate. *Id.* at 255. Recognizing that dividing citizens into different classes based on when they moved into a county undeniably discourages interstate travel, the Court stated: "Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction." *Id.* at 256. Just as in *Maricopa County*, petitioners have been penalized for their interstate travel.

This Court has likewise rejected the argument that challenges under the Privileges and Immunities Clause must fail if in-state residents are also burdened by the regulation in question. *See Camden*, 465 U.S. 208. In *Camden*, an association of labor organizations challenged a local ordinance that required at least 40% of the employees of contractors and subcontractors working on city construction projects be Camden residents. *Id.* at 210. The city argued that because the ordinance discriminated only on the basis of *municipal* residency, there could be no violation of the Privileges and Immunities Clause. *Id.* at 214. Rejecting this argument, the Court stated that "[w]e conclude that Camden's ordinance is not immune from constitutional review at the behest of out-of-state residents merely because some in-state residents are similarly disadvantaged." *Id.* at 217-18.

The same is true here. It does not matter that the valuation freeze burdens every newcomer to Muscogee County by unfairly increasing their property tax bill. The valuation freeze undeniably punishes all those who have moved to the County from outside of Georgia, and therefore violates the privileges and immunities clause and constitutional right to travel.

This Court also has held that statutes with the practical effect of imposing greater burdens on out-of-state residents violate the Privileges and Immunities Clause. *See Chalker* v. *Birmingham & Northwestern Ry. Co.*, 249 U.S. 522, 527 (1919). In *Chalker*, the Court overturned a Tennessee statute that imposed higher taxes on corporations with their principal place of business outside of Tennessee. *Id.* The tax did not,

on its face, draw any distinctions based on citizenship or residence, but its practical effect was to "produce discrimination against citizens of other states by imposing higher charges against them than citizens of Tennessee are required to pay." *Id.*

This Court has recently questioned whether *Chalker* continues to prohibit statutes that have a disparate impact on out-of-state residents. *See Hillside Dairy Inc.* v. *Lyons*, __ U.S. __, 123 S. Ct. 2142, 2147 (2003) ("Whether *Chalker* should be interpreted as merely applying the Clause to classifications that are but proxies for differential treatment against out-of-state residents, or as prohibiting any classification with the practical effect of discriminating against such residents, is a matter we need not decide at this stage of the case."). Granting the petition will give the Court an opportunity to address the question raised in *Hillside*.

IV. The Valuation Freeze Violates Basic Principles of Equal Protection as Enunciated by This Court in *Allegheny Pittsburgh Coal Co.* v. *County Commission*.

The Georgia Supreme Court erred in distinguishing this case from *Allegheny Pittsburgh Coal Co.* v. *County Commission of Webster County*, 488 U.S. 336 (1989), where this Court held that a single West Virginia county's use of acquisition value violated the Equal Protection Clause. Instead, the Georgia Supreme Court held that the valuation freeze is constitutional under the Court's opinion in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992). As is shown below, Georgia's practice of allowing a single county to adopt a tax assessment system at odds with Georgia's own requirement that

property taxes be assessed on fair market value falls squarely under the Court's prior holding in *Allegheny*. *Nordlinger* has no application to this case.

A. Allegheny is Dispositive.

In *Allegheny Pittsburgh Coal Co.* v. *County Commission of Webster County*, 488 U.S. 336 (1989), this Court held that the property tax assessment system used by Webster County, West Virginia, violated the Equal Protection Clause because Webster County applied an assessment scheme different from those of any other West Virginia County. There, the Webster County tax assessor routinely reassessed property at its current fair market value only when the property changed hands. Despite repeated protests by adversely affected owners of comparable properties, the county commission defended the resulting assessments and thus affirmed the practice as its own. Over time, this scheme "resulted in gross disparities in the assessed value of generally comparable property." *Id.*, at 338.

In unanimously striking down the Webster County scheme, this Court acknowledged that *states* have broad powers to impose taxes and may "divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." *Id.* at 344. But the Webster County scheme drew distinctions contrary to West Virginia's "Constitution and laws [which] provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value." *Id.* at 345. Although the Webster Count system might be valid if "applied even-handedly to all similarly situated

property *within the State*," allowing one county to follow a radically different scheme could not meet the requirements of equal protection. *Id.* (emphasis added).

The Muscogee County valuation freeze suffers from the same constitutional infirmity that afflicted Webster County's scheme in *Allegheny*. Like the Webster County scheme, the County freezes valuations on the date of purchase and does not reassess them until the property changes hands. Like the Webster County scheme, the County's valuation freeze produces gross disparities in taxation of comparably valued properties. Respondents have never denied those disparities. Like the Webster County scheme, the Muscogee County valuation freeze fails to achieve the constitutional requirement of a "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* at 343. Finally, as in *Allegheny*, Muscogee County's scheme affects only one county of the State – placing the citizens of that county on a different constitutional footing than other state citizens, who are protected by state constitutional provisions that require that all property be taxed based on its fair market value.

B. The Georgia Supreme Court Erred in Relying on *Nordlinger* v. *Hahn*.

The Georgia Supreme Court found the County's valuation freeze to be substantially similar to the California property tax system upheld by the Court in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992). The Georgia Supreme Court ignored, however, the many differences

between California's Proposition 13 and the LCA at issue here.

First, California's system introduced a statewide constitutional provision adopting an acquisition-value based tax system applicable to all taxable properties in the state. That statewide system contained safeguards missing from the single-county-only freezes at issue here and in *Allegheny*. These safeguards, such as the limited inflation adjustment, allowed the Court to concluded that Proposition 13 would allow for the "seasonable attainment" of reasonably equitable tax rates. No such safeguards are present here – the freeze creates irrational taxation disparities between and among the citizens of Muscogee County and between the citizens of Muscogee County and the remainder of the state.[4]

Second, *Nordlinger* is distinct because California's statewide system served the state's interest in controlling inflation and providing predictability in

---

[4] That the Georgia Supreme Court held that the valuation freeze – because it was enacted as a local constitutional amendment – does not violate any provisions in the Georgia Constitution does not alleviate the equal protection problem created by the fact that Muscogee County has opted-out of a tax system that uniformly taxes property based on its current market value. In *Allegheny*, the West Virginia Supreme Court specifically held that Webster County's valuation system did not violate West Virginia's laws or constitution. *In re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, 564-65 (W. Va. 1987). But this holding did not prevent this Court from finding that Webster County's scheme denied its residents equal protection. The critical issue in *Allegheny* was the fact that Webster County had imposed a property valuation scheme *completely different* from that imposed everywhere else in the state. This is exactly what Muscogee County has done, and by doing so, the County has violated the equal protection clause.

the amount of taxation. Unlike the California system, which capped taxes at no more than 1% of a property's value, the County's valuation freeze does not in any way prevent the County from increasing taxes by raising the millage rate. Thus, contrary to the County's assertions otherwise, the valuation freeze neither protects current homeowners against the danger of unaffordable tax increases nor does it allow them to predict each year the amount of taxes they will owe. The only thing that the valuation freeze does ensure is that new home purchasers and renters will pay more in taxes than will long-time homeowners. The Supreme Court's approval in *Nordlinger* of a taxation system that actually furthered the state's interest in protecting against inflation does not justify a scheme that only serves to impose an ever increasing portion of the County's tax burden on newcomers and renters.

Third, in contrast to the California system, Muscogee County coupled its valuation freeze with an "inflation adjustment,"[5] thereby giving early homeowners the windfall of both a frozen valuation and an annual "rebate" because of the inflation occurring from 1983 to 1992. The inflation adjustment, enacted just *prior to* the valuation freeze, protected County homeowners from the effects of inflation and left little for a valuation freeze to accomplish in that regard, other

[5] The inflation adjustment set the standard homestead exemption at $5,000 for 1982 and then increased the standard exemption each year by an amount equal to the annual percentage increase in the County's total tax digest. *See* 1980 Ga. Laws. 2009. This inflation adjustment – which greatly outpaced the rate of actual inflation – increased the homestead exemption for someone who owned a home in 1983 from $6,237 in-1983 to $13,500 in 1992, when the inflation adjustment was capped. (App. 17a-18a.)

than shift the overall tax burden to newcomers and renters, a fact that belies the County's proffered justification for the valuation freeze. This double-dip in Muscogee County's scheme has no counterpart in the statewide California system upheld in *Nordlinger*.

The trial court properly applied the rational basis test in concluding that the valuation freeze violated the Equal Protection Clause. *Nordlinger* did not give carte blanch to all tax freezes, no matter how arbitrary, irrational, and discriminatory. The Muscogee County freeze, like the one-county aberrational scheme stricken down in *Allegheny*, produces gross inequalities in the taxation of comparable properties, with no rational justification for the discriminatory treatment. Accordingly, the Court should grant the Petition in order to correct the Georgia Supreme Court's misapplication of *Allegheny* and *Nordlinger*, and to resolve a split in state court decisions following *Nordlinger*. *See Roosevelt v. Montana Dept. of Revenue*, 975 P.2d 295 (Mont. 1999) (distinguishing *Nordlinger* and finding Montana tax freeze unconstitutional under *Allegheny*).

CONCLUSION

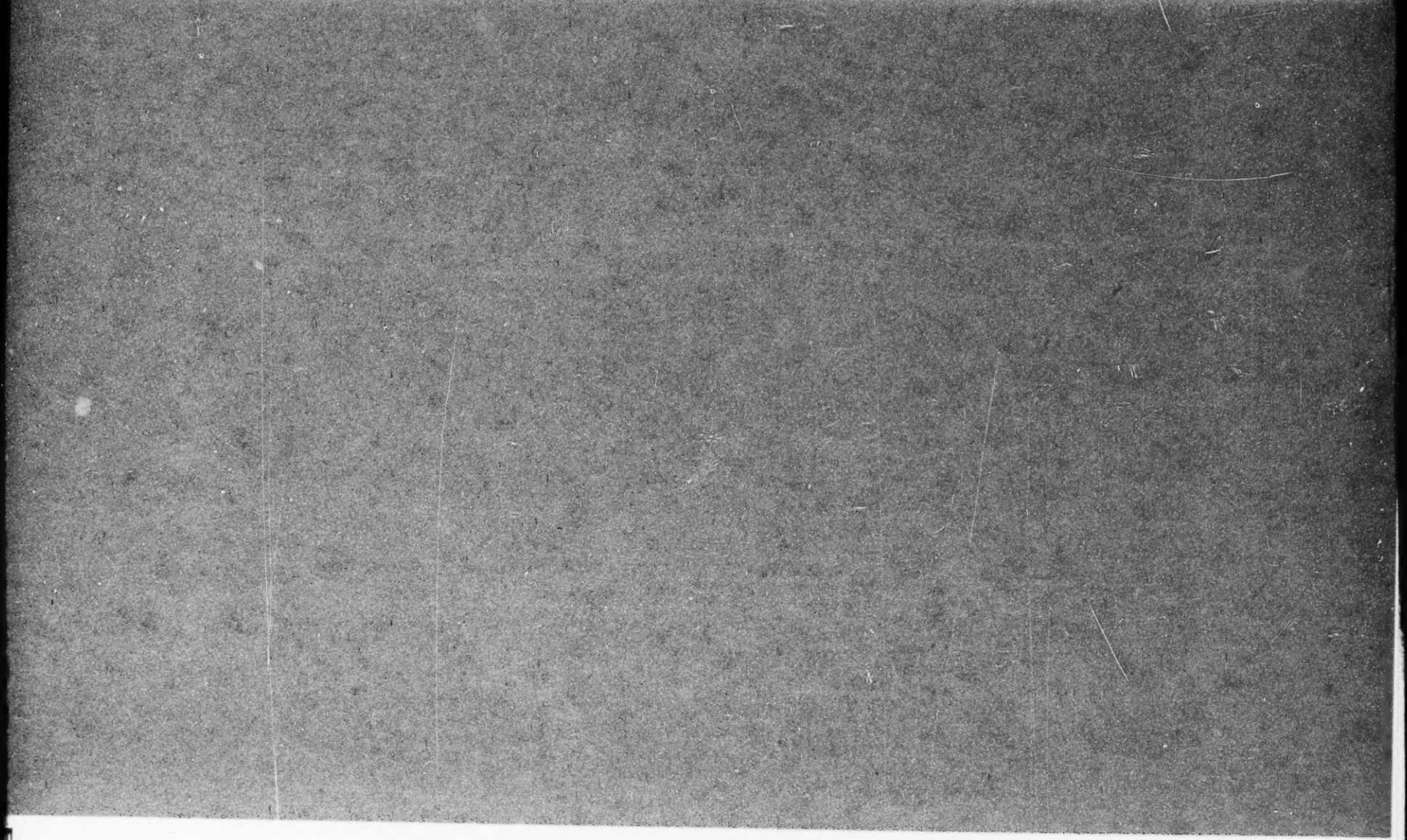
For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Teresa Wynn Roseborough
Counsel of Record
Jason C. Kirkham
Sutherland Asbill
& Brennan LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Counsel for Petitioners

APPENDIX



APPENDIX A — ORDER OF THE GEORGIA SUPREME COURT REVERSING TRIAL COURT'S GRANT OF SUMMARY JUDGMENT TO PETITIONERS, *SUB NOM. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT ET AL. v. CM TAX EQUALIZATION, INC., ET AL.* 276 GA. 332, 579 S.E.2D 200 (MARCH 24, 2003)

IN THE SUPREME COURT OF GEORGIA

S02A1688

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT et al.

v.

CM TAX EQUALIZATION, INC. et al.

HUNSTEIN, Justice.

CM Tax Equalization, Inc. and several individual residents of Columbus-Muscogee County brought suit challenging the constitutionality of a local constitutional amendment ("LCA") that affects the manner in which homestead property in Columbus-Muscogee County Consolidated Government (the County) is valued for ad valorem taxation purposes. The trial court granted summary judgment to plaintiffs, prompting the County government defendants to file this appeal. Because we agree with the County government appellants that the LCA is not unconstitutional for the reasons set forth by the trial court, we reverse.

Appendix A

Pursuant to the provision in the 1976 Constitution that authorized LCAs, see Ga. Const. 1976, Art. XXII, Sec. I, Par. I, the General Assembly in 1981 approved the County's LCA for the purpose of amending Art. VII, Sec. I, Par. III. The LCA provided that

> homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

Ga. L. 1981, p. 1926-1927. The LCA also provided for reassessment to current fair market value when the property is transferred at death to someone other than a spouse. Major improvements to a home are added to the frozen value. The "frozen" value applies only to County ad valorem taxation; the property is taxed at current fair market value for State ad valorem tax purposes. A substantial majority of the voters in the County voted in favor of the "Homestead Freeze" LCA in 1982. Ga. L.1983, p. 5210.

The procedure for enacting new LCAs was not retained in the 1983 Georgia Constitution, but local governments could continue existing LCAs beyond July 1, 1987 by following the provisions set forth in Art. XI, Sec. I, Par. IV(a) of the 1983 Georgia Constitution. The County's Homestead Freeze LCA was continued in effect by the passage of a local law. Ga. L.1986, p. 3800. Pursuant to a 1991 local act

authorizing a local referendum on whether the LCA should be repealed, Ga. L.1991, p. 4255, an overwhelming majority of County voters approved the referendum that continued the Homestead Freeze LCA. Ga. L.1992, CCCLXXXVI.

1. The trial court held that the Homestead Freeze LCA is unconstitutional because it conflicts with the uniformity in taxation clause of the State constitution. Art. VII, Sec. I, Par. III, Ga. Const. of 1983. The Homestead Freeze LCA's enabling legislation expressly reflects that it was intended to amend that clause. Ga. L.1981, p.1926.[1] Although the trial court ruled that the LCA amounted to nothing more than a local law, which could not legally conflict with any earlier-enacted constitutional provision, this ruling fails to recognize that the State Constitution specifically provides that those pre-existing LCAs that were not repealed as provided in Art. XI, Sec. I, Par. IV(a) of the Constitution "shall be continued in force and effect as a part of this Constitution." Id. at (b).

This Court has recognized the continued constitutional status of those LCAs that have not been repealed as provided in Art. XI, Sec. I, Par. IV(a). See, e.g., *Copeland v. State of Georgia,* 268 Ga. 375 (490 SE2d 68) (1997). As we held in *Copeland,*

> When an amendment to the Constitution has been proposed by the General Assembly and ratified

1. Both Art. VII, Sec. I, Par. III(a) of the 1983 Georgia Constitution and Art. VII, Sec. I, Par. III of the 1976 Georgia Constitution address the uniformity of taxation and provide, in identical language, that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

> by the voters, the amendment will not be declared void on the ground that it does not accord with some other provision of the same Constitution. If an amendment, duly adopted, is in conflict with some previous provision, the amendment, being the last expression of the sovereign will of the people, will prevail as an implied modification pro tanto of the former provision. [Cits.] This means that an amendment will not be ineffectual or invalid merely because it conflicts with existing provisions. [Cits.]

Id. at 379-380(4). Hence, in *Copeland* we upheld an LCA authorizing the issuance of certain revenue bonds over the claim that the LCA was in conflict with Art. IX, Sec. V, Par. I (the debt limitations clause), Art. IX, Sec. VI, Par. I (the general revenue bond provisions specifying that revenue bonds are repayable only from project revenues), and the gratuities clause, Art. IX, Sec. II, Par. VIII of the 1983 Ga. Const.

Applying our rationale in *Copeland* to the instant case, we conclude that because the Homestead Freeze LCA in issue here was a subsequent amendment to the uniformity clause, Art. VII, Sec. I, Par. III, and because the LCA continues in force and effect as part of our State Constitution, Art. XI, Sec. I, Par. IV(b), the County's Homestead Freeze LCA is valid despite any conflict with the uniformity clause.[2] See *Copeland*, supra.

---

2. This rationale also controls the trial court's ruling that the Homestead Freeze LCA unconstitutionally conflicts with Art. VIII, Sec. I, Par. VI(a), although in this regard we note that school tax is

(Cont'd)

Compare *Bradfield v. Wells,* 262 Ga. 198 (415 SE2d 638) (1992) (LCA affecting election terms of county officials did not encompass county school superintendent so LCA did not conflict with school superintendent election provision in Constitution).

2. The trial court held that the Homestead Freeze LCA violated the equal protection clauses of the State and Federal Constitutions.

(a) When a classification does not impact a fundamental right or operate to the disadvantage of a suspect class, the disparate treatment caused by the classification must meet only the rational relationship test. *Grissom v. Gleason,* 262 Ga. 374(3) (418 SE2d 27) (1992). Under that test, classifications are "permitted when the classification is based on rational distinctions and bears a direct relationship to the purpose of the legislation. [Cit.]" Id. at 377(3).

> In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, [cit.], the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, [cit.], and the

---

(Cont'd)
required to be levied only "upon the assessed value of all taxable property within the territory served by said school system," id., and we have defined "assessed value" to mean "the correctly assessed value (i.e., the assessed value approved by the revenue commissioner), not an incorrectly assessed value." *Bd. of Comrs. of Newton County v. Allgood,* 234 Ga. 9, 17 (7) (214 SE2d 522) (1975).

> relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational. [Cit.] This standard is especially deferential in the context of classifications made by complex tax laws. "[I]n structuring internal taxation schemes 'the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.'" [Cits.]

Nordlinger v. Hahn, 505 U.S. 1, 11-12 (112 SC 2326, 120 LE2d 1) (1992). In *Nordlinger,* the United States Supreme Court upheld California's acquisition-value based property tax system (known as Proposition 13) against an equal protection challenge, finding that the policies underlying the system promoted the rational, legitimate governmental purposes recognized by the Court, i.e., the encouragement of neighborhood preservation, continuity and stability, id. at 12, and the protection of the reliance interests of existing homeowners. Id. at 12-13. Because Proposition 13 was not "palpably arbitrary," id. at 18, the *Nordlinger* Court concluded that the California tax scheme was not unconstitutional.

The record in this case establishes that the very same policies identified in *Nordlinger* underlie the acquisition-value taxation scheme authorized by the Homestead Freeze LCA. Moreover, by explicitly amending the uniformity in taxation clause, see Ga. L.1981, p.1926, the LCA adopted a taxation scheme different from that specified by Art. VII, Sec. I, Par. III and general revenue statutes. Compare *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster*

County, 488 U.S. 336, 343 (109 SC 633, 102 LE2d 688) (1989). Nevertheless, the trial court rejected the holding in *Nordlinger* and concluded that the taxation scheme in issue here was unconstitutional for the reasons set forth in *Allegheny Pittsburgh,* supra. The *Nordlinger* Court, however, distinguished *Allegheny Pittsburgh* on the basis that no evidence indicated the Webster County's taxation scheme was founded upon the rational government purposes recognized by the Court in *Nordlinger* or that Webster County intended to adopt a taxation scheme that varied in practice from the uniformity standards set forth in West Virginia's constitution and statutes.[3] "*Allegheny Pittsburgh* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme." (Footnote omitted.) Id. at 16.

We find the Homestead Freeze LCA distinguishable from *Allegheny Pittsburgh* on the same grounds explicated by the U.S. Supreme Court in *Nordlinger.* As was the case with Proposition 13, the Homestead Freeze LCA "was enacted precisely to achieve the benefits of an acquisition-value system." Id., 505 U.S. at 16. Although appellees and the trial court point to several factual differences between California's Proposition 13 tax system and the homestead freeze system

---

3. The *Nordlinger* Court found significant the fact that in *Allegheny Pittsburgh* the purpose for the Webster County taxation scheme was to assess properties at their "true current value" and that there was "'no suggestion' that 'the State may have adopted a different system in practice from that specified by statute,' [cit.]" id. at 15, given that West Virginia's constitution and statutes required a uniform tax rate throughout the State.

implemented by the LCA[4] as grounds to distinguish *Nordlinger,* we find none of those differences to be critical to the application of the U.S. Supreme Court's rationale in *Nordlinger* to the instant case. We thus conclude that the Homestead Freeze LCA is not unconstitutional under a rational relationship equal protection analysis because of the classifications it draws among homeowners based upon purchase-date classification or because of the separate classification of homeowners and renters.[5]

(b) The trial court, while properly applying the rational relationship test, also "look[ed] at who is most harmed by the system" in weighing whether the Homestead Freeze LCA was violative of equal protection and listed among the persons disadvantaged by operation of the LCA "young people, people in transition,[6] the working poor, and, perhaps,

---

4. Appellees point to, inter alia, the fact that Proposition 13 applies throughout all of California to all properties, both residential and commercial, and that it does not completely freeze valuation but places an annual two percent inflationary cap. The only distinction discussed by the trial court was that the County allows a homestead exemption, which it increased from $6,237 in 1983 to $13,500 in 1992.

5. The trial court pointed to renters in its conclusion that the LCA is unconstitutional on the basis that lessees arguably had to pay higher rents when lessors, as owners of commercial property not included in the homestead freeze, passed along the increased tax burden.

6. For discussion of the Homestead Freeze LCA's effect upon a constitutional right to travel, see Division 4, infra.

racial minorities."[7] As to racial minorities, the trial court found only that they were "probable victims" of the County's taxation scheme, looking to statistics reflecting that racial minorities in the County tend to be in the lower income brackets. However, it is uncontroverted that the Homestead Freeze LCA applies to all homeowners regardless of income. As appellees concede in their brief, the LCA is based "solely on acquisition date and gives no consideration to income or ability to pay." The record thus establishes that all homeowners benefit from the LCA's inflation control measure, including those homeowners in racial minorities in lower income brackets who are shielded by the LCA from the adverse side effects of gentrification in their neighborhoods. See *Nordlinger,* supra, 505 U.S. at 12 (recognizing the legitimate State purpose of structuring a tax system "to inhibit displacement

---

7. Although the trial court's language would seem to implicate the heightened equal protection test of strict scrutiny for classifications involving suspect classes, see generally *Barnett v. State,* 270 Ga. 472 (510 SE2d 527) (1999), we do not find strict scrutiny appropriate in this case. A facially neutral law, such as the LCA here, warrants strict scrutiny "only if it can be proved that the law was 'motivated by a racial purpose or object,'" [cit.], or if it is "'unexplainable on grounds other than race.'" [Cit.] *Hunt v. Cromartie,* 526 U.S. 541, 546 (119 SC 1545, 143 LE2d 731) (1999). The trial court here made no explicit finding that the Homestead Freeze LCA has a disparate impact on racial minorities that could ultimately be traced to a racially discriminatory purpose. See *Washington v. Davis,* 426 U.S. 229, 240 (96 SC 2040, 48 LE2d 597) (1976). Our review of the totality of the relevant facts adduced in the record fails to reveal that the Homestead Freeze LCA was enacted "at least in part 'because of,' not merely 'in spite of,' its adverse effects" upon an identifiable suspect group. See *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 279 (99 SC 2282, 60 LE2d 870) (1979).

of lower income families by the forces of gentrification"). We disagree with the trial court's ruling that the Homestead Freeze LCA violates equal protection because "racial minorities have had less success than their white economic counterparts in obtaining the financing necessary to purchase homes," given the absence of any evidence in the record that the LCA adversely affects either the fair market value of homes offered for sale within the County or the ability of racial minorities to obtain financing for the purchase of those homes.

As to the adverse affect on young people and the working poor, the *Nordlinger* Court rejected the argument that the California taxation scheme was unconstitutional because of its adverse impact upon many "younger and poorer California families." Id. at 17(III). While potential homeowners may be discouraged from purchasing homes by the prospect of paying taxes assessed to current values (at least as of the year of purchase), this does not render the Homestead Freeze LCA unconstitutional. As the U.S. Supreme Court stated:

> the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner. The State may deny a new owner at the point of purchase the right to "lock in" to the same assessed value as is enjoyed by an existing owner of comparable property, because an existing owner rationally may be thought to have vested expectations in his . . . home that are more deserving of protection that the anticipatory expectations of a new owner at the point of purchase.

> A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with his purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high . . . In short, the State may decide that it is worse to have owned and lost, than never to have owned at all.

Id. at 12-13.

The Homestead Freeze LCA did not violate the equal protection clauses of the State and Federal Constitutions for the reasons set forth by the trial court.

3. Under the applicable rational basis test, see generally *State of Georgia v. Old South Amusements, Inc.*, 275 Ga. 274, 277-278 (564 SE2d 710) (2002), we likewise conclude that the Homestead Freeze LCA does not violate the due process clauses of the State and Federal Constitutions.

4. Finally, because there is no cut-off date or durational residence requirement in the LCA, we find distinguishable the cases relied upon by the trial court when it held that the Homestead Freeze LCA violates the right to travel guaranteed by the Federal constitution. See *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (105 SC 2862, 86 LE2d 487) (1985) (preferential tax treatment accorded veterans residing in state prior to set date but not to those veterans who moved into state after that date); *Memorial Hospital v. Maricopa County,* 415

U.S. 250 (94 SC 1076, 39 SE2d 306) (1974) (one year residency requirement for receipt of indigent health benefits). Nothing in the Homestead Freeze LCA treats new arrivals to the County any differently from long-term County residents seeking to purchase a home there. See *Zobel v. Williams,* 457 U.S. 55, 60 n. 6 (102 SC 2309, 72 LE2d 672) (1982) (right to travel analysis refers to little more than a particular application of equal protection analysis). We agree with appellants that the trial court's reasoning is flawed and that the Homestead Freeze LCA is not unconstitutional on this basis. See *In Re Initiative Petition No. 362 Question 699,* 899 P.2d 1145, 1152 (II) (B) (Okla.1995).

Judgment reversed. All the Justices concur, except Benham, J., who dissents.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF MUSCOGEE COUNTY GRANTING PETITIONERS' MOTION FOR SUMMARY JUDGMENT DATED JUNE 24, 2002

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

Appendix B

ORDER OF THE COURT

Plaintiffs challenged a local constitutional amendment (hereinafter "LCA") in Columbus-Muscogee County under both the Georgia and United States Constitutions. The LCA "freezes" the valuation of homestead property for ad valorem tax purposes at its fair market value on the latter of January 1, 1983, or, with limited exceptions, the date of sale (the "Tax Freeze"). The critical facts have been stipulated by the parties and the matter is before the Court for decision on cross motions for summary judgment.

This Court heard oral arguments on the parties' cross-motions for summary judgment on March 14, 2002. Having reviewed the parties' motions and supporting briefs and considered the parties' oral arguments, the Court now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Virtually all of the facts relevant to the issues raised in this case have been stipulated by the parties. The Court hereby incorporates by reference thereto the Stipulations and Supplemental Stipulations submitted by the parties into this Judgment and Order. Given the comprehensiveness of these stipulations, the Court here describes the facts only in brief, including as necessary, findings of fact not stipulated by the parties but which the Court finds to be uncontroverted.

Plaintiffs in this action are the CM Tax Equalization Foundation, a private, nonprofit corporation established by Muscogee Citizens concerned about the disparities in the imposition of ad valorem taxes in Muscogee County,

and several residents of Muscogee County (collectively "Citizens"). Some of the resident plaintiffs are homeowners directly subject to the County's ad valorem taxes, while others are renters. Defendants are the Columbus-Muscogee County Consolidated Government; the Muscogee County Board of Tax Assessors, the County Tax Commissioner, and the Muscogee County Board of Equalization (collectively "Muscogee County").

In 1980, the Columbus City Council passed a resolution endorsing the creation of a homestead freeze. The Council cited the need to protect the citizens of the County from increasing property assessments caused by rampant inflation. Inflation throughout the South could fairly be described as rampant at that time. The Bureau of Labor Statistics reports that inflation in the South Urban region reached 11.4% in 1979, 13.1% in 1980, and 10.7% in 1981.

In 1983, Muscogee County, unlike any of the other 158 counties in Georgia, froze the valuation of homestead property for ad valorem tax purposes at fair market value for the later of one of three dates: (1) January 1, 1983, (2) January 1 of the first year in which the homestead exemption is claimed and allowed, or (3) January 1 of the year following the last change of ownership. Under the tax freeze, the frozen value remains the assessed value until the property is sold or transferred at death to someone other than a spouse. Only then, when in the possession of the new homeowner, will the property be revalued at the then-current fair market value. The freeze applies only to homestead property; it does not apply to rental residential facilities or commercial property.

Appendix B

The tax freeze produces widely varying tax assessments for homes of comparable fair market value. The parties have stipulated to numerous examples of the magnitude of the disparity. For instance, approximately 1773 homesteads in the County had a fair market value for ad valorem tax purposes in the year 2000 of $75,000 (plus or minus 2.5%). Due to the tax freeze and the County's Standard Homestead Exemption, 27 of these homeowners owed no County ad valorem tax at all; more than 110 other homes owed $110 or less; while approximately 840 homes of an approximate value of $75,000 were taxed on the basis of their current fair market value and had a County ad valorem tax bill averaging $660, 5 times the amount being paid by hundreds of other *citizens* owning homes of equivalent value and more than 600 times the amount assessed to the earliest homeowners. The disparity in some cases is as high as 4000%. In one instance the owner of a home with a present day market value of $104,857 is assessed only $20.60 in ad valorem taxes, while a neighbor owning a home only a block away with a present day value of $101,480 receives a tax bill of $837.36.

Muscogee County's tax freeze was enacted at the request of the County's delegation by a single house of the legislature as an LCA, subject to approval by the citizens of the County in a public referendum. *See* 1981 Ga. Laws 1926. Muscogee County voters gave that approval in the same general election in which the people of the state adopted a new constitution that terminated any further use of LCAs and that provided for a limited carried over status for existing LCAs. *See* 1983 Ga. Laws 5210. Under the provisions of the 1983 Georgia Constitution, if the County had taken no action prior to July, 1 1987, the LCA would have died. Ga. Const. Art. XI, § 1,

para. iv(a). The General Assembly and Muscogee County's voters, however, approved a local law that saved the tax freeze LCA from automatic extinction. *See* 1986 Ga. Laws 3800.

LCA's are distinct from other provisions of the Constitution. They apply only within a specific geographic subdivision. More importantly, unlike other constitutional provisions, which can be repealed only by a favorable vote of two-thirds of each house of the General Assembly and approval by a majority of the state's voters, Ga. Const. Art. X., an LCA can be repealed much more readily. Only a local act of the General Assembly approved by a majority of the County's voters is required. Ga. Const. Art. XI, § 1, para. iv(b).

Another LCA passed by Muscogee County also impacts the assessment of ad valorem taxes in the County. In 1980 Muscogee County approved an LCA fixing the County's Standard Homestead Exemption at $5,000 for 1982 and adjusting the exemptions for all subsequent years by the percentage by which the taxable properties in the County tax digest of the prior year increased or decreased from the year prior to that. *See* 1980 Ga. Laws 2009. This "inflation adjustment" increased the Standard Homestead Exemption for a 1983 homeowner from $6,237 in 1983 to $13,500 for 1992, or a total increase of $7,263.

Because the inflation adjustment used the increase in the total tax digest as the measure of inflation, the rate of increase in the exemption far outstripped the actual impact of inflation. For example, while the rate of inflation in the

County as measured by the Consumer Price Index totaled only 35.4% in the 10-year period from 1983 through 1992, the total "inflation adjustment" in the Standard Homestead Exemption for that same period reached 216% ($13,500 ÷ $,7,263).

Both the tax freeze and the "inflation adjustment" were peculiar to Muscogee County alone and were reauthorized at the same time under the expiring local constitutional amendment process. *See* 1986 Ga. Law 3800; 1986 Ga. Law 3798. Also, in 1991, the tax freeze was again approved by local referendum and, at the same time, the "inflation adjustment" was capped at $13,500 by local legislation. *See* 1991 Ga. Law 4265.

The combination of the tax freeze and the inflation adjustment provides remarkable tax relief to 1983 homeowners. Although the tax freeze protected them from any inflation-related increase in their taxable values, the inflation adjustment increased their homestead exemption each year by an amount far in excess of the prevailing inflation rate. The greater the inflation from 1983 to 1992, the higher their homestead exemptions and the lower their property taxes.

CONCLUSIONS OF LAW

A. Overview

The Court finds that the tax freeze abridges fundamental rights protected by both the Georgia and the United States Constitutions. The tax freeze has resulted in gross disparities in the assessed value of essentially comparable properties.

Such a disparity can be constitutionally justified only if it is the result of a difference in classification that rationally and reasonably furthers a legitimate state interest. *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). While the U.S. Supreme Court has granted leeway to state actors to craft their own means of taxation, the Court still insist on rigid ends mandating that "in each case, the Constitution requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners. *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989). The present tax scheme in Muscogee County with its highly disparate tax treatment of similarly situated property owners does not pass constitutional muster. The Court further finds that the homestead exemptions in Muscogee County protects homeowners from inflation and creates stability in neighborhoods, thus accomplishing the alleged goals of the tax freeze and leaving no rational basis for it. Muscogee's tax freeze, therefore, violates the Equal Protection and Due Process Clauses of the United States Constitution.

The Court further finds that the freeze violates the Uniformity, Equal Protection, and Due Process clauses of the Georgia Constitution. Though nominally an LCA, the freeze, which can be repealed by a bare majority of the citizens of Muscogee County, cannot abridge fundamental rights secured by the Georgia Constitution.

The Court further finds that the freeze discriminates against persons who move into the County from other states in violation of the right to travel protected by the United States Constitution.

Appendix B

B. Standing

Before addressing the various constitutional violations asserted by the Citizens, the Court first addresses Muscogee County's arguments regarding standing. Under Georgia law, "the only prerequisite to attacking the constitutionality of a statute 'is a showing that it is hurtful to the attacker.'" *Bo Fancy Prods. v. Rabun County Bd. Of Comm'rs*, 267 Ga. 341, 344, 478 S.E.2d 373 (1996) (citations omitted). The individual Plaintiffs here represent a cross-section of those burdened by the tax freeze, including homeowners and renters. Each individual Plaintiff has been forced to bear a disproportionate share of the County's tax burden, and the homeowner Plaintiffs have been compelled to pay property taxes in excess of those assessed on owners of equivalent property without regard to their ability to pay. These injuries give Plaintiffs standing to challenge Muscogee County's tax freeze by asserting their rights under both the United States and Georgia Constitutions.

Muscogee County argues that the Plaintiffs who rent property in Muscogee County do not have standing to challenge the tax freeze because they are not assessed taxes by the County. However, renters are undeniably injured by the freeze. The unchallenged affidavits of John Flattery and Will White, attached as exhibits to Plaintiffs' summary judgment motion, as well as basic economics, however, demonstrate that the resulting tax increase is passed on to renters through increased rents. *See Baker v. Matheson*, 607 P.2d 233, 243 (Utah 1979) (noting that "property taxes are generally passed on by landlords to their renters in the form of increased rents"). Because the Plaintiffs who rent property in Muscogee County have been

injured by the County's tax scheme, they have standing to challenge the constitutionality of the County's policies.

Muscogee County contends that this action should be dismissed because several of the homeowners failed to exhaust required administrative remedies. Georgia law is clear that the courts will not require a plaintiff to exhaust a futile administrative remedy. In this case, it is clear that any appeal of the tax assessments through an administrative process would have been futile given the inability of the Board of Tax Assessors or the Board of Equalization to address the homeowners' constitutional concerns.

Finally, Muscogee County contends that Plaintiffs lack standing to challenge the tax freeze on the ground that it violates the constitutionally protected right to travel because all of the Plaintiffs have chosen to live in the County despite the tax freeze. The Court disagrees. At least two of the Plaintiffs, Ron and Faye Sherrill, moved to Muscogee County from another state and have standing to assert a right to travel claim because they pay higher taxes based on when they moved to Muscogee County from another state. It is of no consequence that the Sherrills chose to move to Muscogee County in the face of the County's discriminatory tax scheme. Many of the Supreme Court cases discussing the right to travel were brought by plaintiffs who had already completed interstate travel despite the burden imposed by the challenged statute. *See, e.g., Saenz v. Roe*, 526 U.S. 489 (1999); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Appendix B

C. Equal Protection

Muscogee County's tax freeze violates the Equal Protection Clause of the United States Constitution. The "appropriate standards of review are whether the difference in treatment" caused by the freeze "rationally furthers a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992), and whether there has been a seasonable attainment of tax treatment of similarly situated property owners, *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989). In *Nordlinger*, the Supreme Court held that an acquisition-value based property tax system is constitutional provided there is a rational basis for it. As in *Nordlinger*, the property tax system at issue in the present case is an acquisition-value based system. In a strikingly similar case, *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989), that is difficult for this Court to reconcile with *Nordlinger*, the Supreme Court invalidated a State taxing scheme on equal protection grounds.[1] In *Allegheny*, the Court ruled that the practice of assessing coal mining property according to acquisition cost violated the equal protection rights of those taxpayers who were recent purchases of coal property as a result of the vast tax disparities of like property in Webster County.

---

1. Samuel A. Mandarino – Nordlinger to Allegheny: This Town Ain't Big Enough for the Both. 1993 Wis. L. Rev. 1195.

Michael D. Rawlins – *Nordlinger v. Hahn* and *Allegheny Pittsburgh Coal Co. v. County Commissioners*, 1993 Brigham Young University L. Rev.

John A. Miller – Rationalizing Injustice: The Supreme Court and the Property Tax. 1993 Hofstra Law Review Association.

Appendix B

The Defendants in this case must show that the difference in treatment of new homeowners versus old homeowners rationally furthers a legitimate state interest. To be rational, the classification must forward a public good that outweighs the harm it may cause to those who are disadvantaged by the classification. Defendants in the present case use the same rationale for the tax freeze as the Defendants in *Nordlinger*: protection of homeowners against rising inflation rates and local neighborhood preservation, continuity, and stability. The Supreme Court in *Nordlinger* held that this rationale satisfied the requirement that the law rationally further a legitimate state interest.

Nevertheless, the Court also looks at who is most harmed by the system. In reversing the West Virginia Supreme Court, the Court ruled that "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." In the present case, unlike in California's Proposition 13, Muscogee County supplements the tax freeze with a homestead exemption. In 1980 Muscogee County approved an LCA fixing the County's Standard Homestead Exemption at $5,000 for 1982 and adjusting the exemptions for all subsequent years by the percentage by which the taxable properties in the County tax digest of the prior year increased or decreased from the year prior to that. *See* 1980 Ga. Laws 2009. This "inflation adjustment" increased the Standard Homestead Exemption for a 1983 homeowner from $6,237 in 1983 to $13,500 for 1992, or a total increase of $7,263.

Appendix B

The combination of the tax freeze and the inflation adjustment provides remarkable tax relief to 1983 homeowners. Although the tax freeze protected them from any inflation-related increase in their taxable values, the inflation adjustment increased their homestead exemption each year by an amount far in excess of the prevailing inflation rate. The greater the inflation from 1983 to 1992, the higher their homestead exemptions and the lower their property taxes.

Measured against the yard stick of Proposition 13, the Muscogee tax freeze does not rationally further a legitimate state interest. As an inflation control measure it is far too extreme and too suspect to survive constitutional review, especially when evaluated in light of the inflation adjustment measure already in place. The justification that it protects the elderly and protects those of lower income also fails to survive rational basis review. Based upon published Census data, plaintiffs have demonstrated that the county renters on the whole are financially less affluent than homeowners and include a proportionately large number of minorities. Yet renters are excluded from the tax relief afforded by the freeze. Stated another way, those who are hurt by this scheme are those persons who do not currently own homes (but who hope to) are those most harmed by such a system. Included in this group are young people, people in transition, the working poor, and, perhaps, racial minorities. The Court includes racial minorities as probable victims because historically people of color have had less success than their white economic counterparts in obtaining the financing necessary to purchase homes. This exclusion makes the freeze an irrational device for benefiting the citizens disproportionately found in the excluded class. In his dissent in *Nordlinger*

Justice Stevens stated "Similarly situated neighbors have an equal right to share in the benefits of local government. It would obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services."

The rational basis test, while somewhat of a lenient standard, requiring only that the classification scheme must be reasonable, remains dependent upon context and human judgment, and ultimately calls on the Court to be fair and do what is right.

As supplemented by the homestead exemption, the tax freeze does not rationally and reasonably further a legitimate state interest. It therefore violates the Equal Protection Clause of the United States Constitution.

D. Violation of the Georgia Constitution

Muscogee's tax freeze also violates numerous provisions of the Georgia Constitution, including the uniformity clauses and the equal protection clause.

Muscogee County asserts that because its freeze was enacted as a local constitutional amendment, it cannot be held to violate any provision of the Georgia Constitution. The Court holds that under the Constitution as presently configured, the violation of fundamental provisions of the Georgia Constitution by a local constitutional amendment cannot be countenanced.

Certainly, a local constitutional amendment could not withstand constitutional attack if it was enacted to promote

segregation anymore than the subject LCA that results in vast tax disparities of like property in Muscogee County. While this Court in no way attempts to address the constitutionality of the State's other existing LCA's, it is worth noting that the 1983 Georgia Constitution effectively diminished the status of LCA's relative to the Constitution's more fundamental provisions. The 1983 Constitution provides that an LCA carried-over after 1987 can be repealed by a local bill of the General Assembly conditioned on approval by a majority vote in the affected governmental district.

The Muscogee tax freeze could be repealed by the mere passage of a local bill by majority vote of the legislature ratified by only 50% of the voters in Muscogee County alone. Ga. Const. Art. XI, § 1, para. iv(b). In contrast, the Uniformity, Equal Protection clause, and School Funding Clauses of the Georgia Constitution could be repealed only by a favorable vote of two-thirds of each house of the General Assembly and approval by a majority of the state's voters. Ga. Const. Art. X. This distinction in how they can be repealed, reveals something essential about the character of each. Indeed, the power to destroy is often the best indicator of character. *Cf. Bowsher v. Synar*, 478 U.S. 714, 727-28 (1989) (holding that Comptroller General was not an executive officer because he could be removed by a simple act of Congress rather than by impeachment).

However appealingly named, it is clear to this Court that a provision of the Constitution that can be repealed by a mere majority of the inhabitants of a single county cannot be held to set aside fundamental rights guaranteed by other provisions of that same Constitution. That the Muscogee tax freeze is embodied

in a local "constitutional" amendment does not save it from being held to violate the Uniformity, Equal Protection, and School Funding Clauses of the Georgia Constitution.

The Georgia Constitution requires that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Ga. Const. art, VII, § 1, ¶ 3(a). Under this uniformity clause, all real and personal tangible property (with certain exceptions not applicable here) constitutes a single class of property and must be assessed and taxed alike. *Benson Corwin, Inc. v. Cobb County Sch. Dist.*, 239 Ga. 199, 236 S.E.2d 361 (1977). When comparable properties are assessed, and thereby taxed, at different amounts, the uniformity clause is violated. *Benson Corwin*, 239 Ga. at 200, 236 S.E.2d at 362; *Colvard*, 218 Ga. at 490, 128 S.E.2d at 732; *Suttles*, 193 Ga. at 128, 17 S.E.2d at 734.

The Georgia Constitution also requires that county school taxes must be levied upon the full assessed value of all taxable property within the school district. Ga. Const. art. VII, § 6, ¶ 1(a). Because of the tax freeze, the County is utterly failing to levy the county school tax upon the full assessed value of all "taxable property" within the district. Instead, the County levies the school tax on the arbitrarily low "frozen" value of homestead property, in violation of the Georgia Constitution. The Supreme Court has squarely held that to freeze a property's assessed value at an amount below fair market value would violate Ga. Const. art. VIII, § 6, ¶ 1(a). *Benson Corwin*, 239 Ga. at 200-01, 236 S.E.2d at 362-63.

E. Right to Travel

The tax freeze violates the right to travel guaranteed by the United States Constitution. In *Nordlinger*, the Supreme Court declined to address the issue of whether an acquisition-value based tax system violates the right to travel because the petitioner in *Nordlinger* had been a resident of the state of California prior to purchasing a home, thus the Court held the petitioner's right to travel could not have been violated. In the present case, however, at least two of the petitioners moved into Muscogee County from outside the state of Georgia.

In *Hopper v. Bernalillo County Assessor*, 472 U.S. 612, 618 n.6 (1985) (citation omitted), the Supreme Court held that the right to travel, "when applied to residency requirements, protects new residents of a State from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." *See, e.g., Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 261 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969), *overruled in part on other grounds by, Edelman v. Jordan*, 415 U.S. 651 (1974).[2] For homeowners who moved to the County after the frozen valuation period, their tax burden unconstitutionally is pre-determined to be more costly

2. An earlier case, *Zobel v. Williams*, 457 U.S. 55 (1982) invoked the Equal Protection Clause to invalidate an Alaska statute that distributed a portion of the state's mineral income to each of the state's residents in proportion to the number of years that resident had lived in the state. [*Id.* at 59]. There was a "fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." [*Id.* at 59].

than those who resided in the County earlier. The tax freeze, by applying only to those in residence during a limited period, is unconstitutionally restricted to a select group of homeowners.

It seems clear that newcomers to acquisition-value states labor under a continuous disability with respect to property ownership. As long as land prices are generally rising, which they are in Georgia and particularly Muscogee County, newcomers will be unable to acquire the benefits of real property ownership without incurring taxes at a higher effective rate than previous buyers. That disability places newcomers in a second-class status compared to the earlier arrivals who will generally constitute the majority of the taxpayers. The deprivation is permanent, and in a period of continually rising land prices the degree of deprivation increases for each new wave of immigrants. Thus, the disability is not temporary, and strict scrutiny may be triggered even if property ownership is not considered one of life's necessities. To permit a person to migrate and settle in a new area, but to use state tax laws to disable that person from purchasing real estate on the terms enjoyed by previous buyers, is to relegate that citizen to second-class status.[3]

Muscogee County contends that the constitutional right to travel is not infringed because the tax freeze affects all those who move to Muscogee County after the January 1, 1983, regardless whether they moved from out of state, citing *In re Initiative Petition No. 362 Question 699*, 899 P.2d 1145 (Okla. 1995). The Supreme Court, however, rejected the very

3. Mary Lafrance – Constitutional Implications of Acquisition – Value Real Property Taxation: Assessing the Burdens on Travel and Commerce. 1994 Utah L. Rev. Society.

same argument in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). There the challenged Arizona statute conditioned counties' obligation to provide indigent hospital care on the recipient's having lived in the county for at least a year. 415 U.S. at 252. The county argued that the statute was nonetheless constitutional because it penalized anyone who had lived in the county for less than a year, regardless whether the effected person had moved intrastate or interstate. *Id.* at 255. The Court rejected the argument because of the statute's undeniable effect on those who moved from out of state: "Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction." *Id.* at 256. Likewise, it does not matter that the tax freeze applies to everyone who moves into Muscogee County. The right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents. *Id.* at 259-61. The right to receive vital government benefits on equal terms is arguable absent in any property taxation scheme that compels new arrivals to pay higher taxes for the same privileges of property ownership and the same accompanying government services that are received by longer-term residents for a lower price. Notwithstanding its general applicability, the County's tax scheme has an undeniable effect on those who have moved to the County from outside Georgia. The tax freeze is therefore unconstitutional.

Appendix B

IT IS ***ORDERED AND ADJUDGED*** that Plaintiffs' Motion for Summary Judgment is **GRANTED.** Defendants' Motion for Summary Judgment is **DENIED.**

IT IS ***FURTHER ORDERED*** that Defendants present to the Court within ninety days of the date of this Order a plan for termination of the tax freeze to become fully effective within a reasonable time not exceeding three calendar years following the effective date of this Order.

IT IS ***FURTHER ORDERED*** that Defendants' counsel consult with Plaintiffs' counsel during the ninety days allotted in an effort to secure the Plaintiffs' approval of the Order to be proposed. It is the request of the Court that the respective counsel collaborate in a constructive way to accomplish the directives of this Order.

Plaintiffs, as the prevailing party, are hereby awarded their reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988.

This 24th day of June, 2002.

s/ George M. Peagler
George M. Peagler, Judge
Superior Court, Southwestern
Judicial Circuit
Sitting by special appointment by
Order of the Superior Court
Muscogee County,
Georgia dated September 6, 2000

APPENDIX C — STIPULATIONS OF THE PARTIES IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, STATE OF GEORGIA

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

Appendix C

STIPULATIONS

The parties hereby stipulate to the following facts in this matter, without necessity of further proof:

General Facts Regarding the Homestead Freeze

1. In the Columbus-Muscogee County Consolidated Government (hereinafter the "County"), the valuation of homestead property for ad valorem tax purposes is "frozen" at fair market value as of the later of January 1, 1983; or January 1 of the first year in which homestead exemption is claimed and allowed; or January 1 of the year following the last change in ownership (the "Homestead Freeze").

2. The frozen value of a parcel of homestead property stays frozen until the property is sold or transferred at death to someone other than a spouse, at which point it is revalued at the then-current fair market value in the hands of the new homeowner.

3. Major improvements to a home are added to the frozen value.

4. The frozen value of homestead property for County ad valorem tax purposes is determined without consideration of the ability to pay or income of the homestead owner.

5. The value of non-homestead property in the County, including rental residential property, is not "frozen" in the manner described in paragraphs 1-3 above.

6. The State of Georgia imposes an ad valorem tax on homestead property (owner-occupied residence) based upon the current fair market value of the property, not the "frozen" value of the property, and this tax amounts to 1/4 of a mill.

7. The state ad valorem tax referred to in paragraph 6 is collected and paid over to the State by the County.

8. In order to administer County ad valorem taxes and to collect the state ad valorem tax, the County makes an annual determination of both the current fair market value and the frozen value of each homestead property. For purposes of the state ad valorem tax, properties are assessed at full fair market value. The consolidated government maintains two separate databases to account for the separate assessments.

9. The revenues raised by property taxes fund the public duties and programs of the County, including, but not limited to local public schools; local law enforcement; local fire departments and emergency medical services; and general government departments, including engineering services and public works services.

Enactment and Continuation of the Homestead Freeze

10. The Homestead Freeze was enacted in 1982 pursuant to the local constitutional amendment ("LCA") process of the Georgia Constitution of 1976, Art. 12, § 1, ¶ 1.

11. In accordance with the LCA process, the Homestead Freeze was approved by a majority of registered Columbus/

Muscogee voters in the November 1982 general election. The vote in favor of the Homestead Freeze was 19,513 to 7,143, or roughly 73.2% to 26.8%. *See* 1983 Ga. L. 5210.

12. The procedure for enacting new LCAs was not retained in the 1983 revision to the Georgia Constitution, which provided that henceforth only "amendments of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people." Ga. Const. Art. 10, § 1, ¶ 1.

13. The Constitution of 1983 contained a "sunset" provision which preserved then existing LCAs until July 1, 1987.

14. Under the Constitution of 1983, local governments could continue LCAs beyond July 1, 1987, either by local law enacted prior to July 1, 1987, with or without a referendum as provided by law, or by an ordinance or referendum adopted by the local governing authority in the manner provided for the adoption of home rule amendments to a charter or local act. Ga. Const. Art. 11, § 1, ¶ 4(a).

15. The Homestead Freeze was continued in effect beyond July 1, 1987 by the passage of a local law. *See* 1986 Ga. L. 3800.

16. During the 1991 Session of the General Assembly, a local act was passed authorizing a local referendum on whether the Homestead Freeze should be repealed. *See* 1991 Ga. L. 4255.

Appendix C

17. In a local referendum held on November 5, 1991, a majority of registered Columbus/Muscogee voters approved the county referendum that continued the Homestead Freeze. The vote *against* the proposed repeal of the Homestead Freeze was 24,247 to 5,731, or roughly 80.9% to 19.1%. *See* 1992 Ga. L. CCCLXXXVI.

Public Debate Regarding The Homestead Freeze

18. The parties stipulate as to the authenticity of the following records of the Council of Columbus, Georgia, which records are incorporated herein by reference and attached hereto as Exhibits:

(a) Resolution No. 667-80, dated December 23, 1980, and approved by a unanimous vote. The resolution states the Council's reasons for proposing the homestead freeze, including its desire to protect homeowners from "higher property assessments brought about by rampant inflation";

(b) Minutes of the December 23, 1980 Council Meeting;

(c) Resolution No. 108-91, dated February 26, 1991, and approved by a vote of 6-5. The resolution requested that the General Assembly repeal 1986 Ga. L. 3800. The voters of Columbus-Muscogee defeated the proposed repeal in a 1992 referendum;

(d) Minutes of the February 26, 1991 Council Meeting; and

(e) Minutes of the October 8, 1991 Council Meeting.

19. The parties stipulate as to the authenticity of the following published newspaper articles that reflect the public debate about the homestead freeze, which articles are incorporated herein by reference and attached hereto as Exhibits:

(a) Counts, Susan, *Council Studies Legislative Requests Today,* Columbus Ledger-Enquirer, Dec. 16, 1980, at A3;

(b) Counts, Susan, *Tax Relief Measure Faces Uphill Battle,* Columbus Ledger-Enquirer, Dec. 24, 1980, at B6;

(c) Wright, Ben, *Vote on Tax Change is Delayed,* Columbus Ledger-Enquirer, Feb. 20, 1991, at D1;

(d) Wright, Ben, *Columbus Council Divided on Killing Tax Assessment Freeze,* Columbus Ledger-Enquirer, Feb. 21, 1991, at D1;

(e) Wright, Ben, *Close Vote Expected on Property Tax Assessment Freeze,* Columbus Ledger-Enquirer, Feb. 26, 1991, at A1;

(f) Wright, Ben, *Heating Up in Favor of the Freeze,* Columbus Ledger-Enquirer, Oct. 1, 1991, at B1;

Appendix C

(g) *Why Not Have a Town Meeting on Tax Freeze?*, Columbus Ledger-Enquirer, Oct. 3, 1991 at A9;

(h) *Mayor, Council Acted Wisely in Revoking Freeze*, Columbus Ledger-Enquirer, Feb. 28, 1991, at A8;

(i) Wright, Ben, *Land, Martin Debate Assessment Freeze*, Columbus Ledger-Enquirer, Oct. 10, 1991, at A1;

(j) Wright, Ben, *Pro-freeze Group Seeks Donations From its Supporters*, Columbus Ledger-Enquirer, Oct. 16, 1991, at B1;

(k) Wright, Ben, *For or Against Freeze? Go to a Forum Tonight*, Columbus Ledger-Enquirer, Oct. 17, 1991 at B1;

(l) Winn, Billy, *Lift the Freeze, Banish "Can't Do"*, Columbus Ledger-Enquirer, Oct. 22, 1991, A8;

(m) Lisby, Carroll, *Martin Has Fumbled on the Freeze*, Columbus Ledger-Enquirer, Oct. 24, 1991, at A6;

(n) Winn, Billy, *Some Who Support Lifting the Freeze*, Columbus Ledger-Enquirer, Oct. 27, 1991 at E2;

(o) Winn, Billy, *Tax Referendum Could Polarize City*, Columbus Ledger-Enquirer, Oct. 29, 1991 at A12;

(p) *More Opinions on the Referendum*, Columbus Ledger-Enquirer, Oct. 31, 1991, at A9;

Appendix C

(q) *Readers Continue Contributions on Tax Freeze Issue,* Columbus Ledger-Enquirer, Nov. 1, 1991, at A11;

(r) Owen, Michael, *They Might Freeze in Washington,* Columbus Ledger-Enquirer, Nov. 2, 1991, at A4;

(s) Demetrius Patterson, *Groups Make Dueling Statements on Tax Freeze,* Columbus Ledger-Enquirer, Nov. 2, 1991, at B1;

(t) Wright, Ben, *Freeze Activists Work to Get Voters to Polls,* Columbus Ledger-Enquirer, A1;

(u) *Let's Thaw the Freeze So We Can Pull Together,* Columbus Ledger-Enquirer, Nov. 3, 1991, at E2;

(v) Blanchard, James, *Our Choice: Status Quo or Progress,* Columbus Ledger-Enquirer, Nov. 3, 1991, at E4;

(w) Land, Ted, *Foes Don't Have Corner on Fairness,* Columbus Ledger-Enquirer, at E4;

(x) Wright, Ben, *Large Voter Turnout Expected,* Columbus Ledger-Enquirer, Nov. 4, 1991, at A1;

(y) Wright, Ben, *Tax Freeze Vote Today,* Columbus Ledger-Enquirer, at A1;

(z) Winn, Billy, *Vote "Yes" to Lift the Tax Freeze,* Columbus Ledger-Enquirer, Nov. 5, 1991, at A6;

Appendix C

(aa) Edelstein, Ken, *Legislators Mum on Tax Referendum,* Columbus Ledger-Enquirer, Oct. 27, 1991, at A1;

(bb) *Tax Freeze Vote Taught us all a Valuable Lesson,* Columbus Ledger-Enquirer, Nov. 7, 1991, at A8; and

(cc) Benham, Liza, *Election Process Smooth as Taxing Issue Brings Out Voters,* Columbus Ledger-Enquirer, Nov. 6, 1991, at A6.

Facts Regarding the Plaintiffs

20. Plaintiff CM Tax Equalization Foundation, Inc. (the "Foundation") is a private, non-profit corporation incorporated under the laws of the State of Georgia.

21. The officers of the Foundation are Joe M. Flournoy, who served on the Muscogee County Board of Tax Assessors from 1992 through 1998; John Flournoy, the president of Flournoy Development Company; and Will White, apartment developer, owner, and operator.

22. Plaintiffs Hulette Booth, William Feighner, Terrell Green, Bettie Ruth Haynes, Moses Haynes, Kenneth Henson, Jr., Earle F. Lasseter, Sally Bork Lasseter, Lisa D. McNarry, Faye Sherrill, Ron Sherrill, Ted Short, Penny Short, Carl J. Thomas, Connie Gray Thomas, Ernestine Wells, Richard Wells, Will White, Amy White, Astrid Wightman, and Christopher Wightman are adult residents of Muscogee County.

Appendix C

23. Hulette Booth currently rents an apartment at 2510 Cherokee Avenue, in Muscogee County.

24. Hulette Booth has rented in Muscogee County for almost 20 years.

25. William Feighner is a long-time resident and former mayor of Columbus who currently resides at 6921 Marina Cove Court.

26. William Feighner's home was purchased in 1993.

27. Terrell Green and Lisa D. McNarry, husband and wife, moved to Muscogee County in 1997, to accept positions on the faculty of La Grange College.

28. Terrell Green and Lisa D. McNarry purchased a home at 525 C & D Double Churches Road when they moved to Muscogee County in 1997.

29. Moses and Bettie Ruth Haynes, husband and wife, have lived in Muscogee County for the past 20 years and currently rent a home at 3 Esquilline Courts.

30. Bettie Ruth Haynes, a civilian, is employed as a cook at Fort Benning.

31. Kenneth and Eileen Henson, husband and wife, own a home at 874 Graystone Drive in Columbus, which they purchased in 1994.

Appendix C

32. Earle F. Lasseter and Sally Bork Lasseter, husband and wife, are long-time residents of Muscogee County who own a home at 6855 Ranch Forest Drive, which they purchased in 1986.

33. Earle F. Lasseter is a practicing attorney in Columbus.

34. Sally Lasseter served on the Muscogee County School Board from 1984 through 1994.

35. Faye Sherrill and her husband, Ron Sherrill, purchased their home at 6338 Dupree Drive in Muscogee County in July 1998.

36. Faye Sherrill retired after 26 years as a civil servant at Tinker Air Force Base, in Oklahoma and moved to Muscogee County.

37. Ron Sherrill retired from the United States Army; he was last stationed at Fort Benning.

38. Ted and Penny Short owned a home near downtown Columbus for almost 30 years until they decided they were ready to downsize and move to a smaller home.

39. In 1998, the Shorts sold their larger home and purchased a new, smaller home at 7750 Hillside Drive in Muscogee County.

Appendix C

40. Carl and Connie Gray Thomas, husband and wife, rented for years in Muscogee County before they purchased their home at 2951 Luckie Street in Muscogee County in 1998.

41. Carl J. Thomas is a corrections officer at the Columbus Regional Youth Detention Center.

42. Connie Gray Thomas is employed at the military exchange at Fort Benning.

43. Richard and Ernestine Wells, husband and wife, purchased their home at 7206 Stone Creek Lane in Muscogee County in December 1998.

44. Richard Wells retired from the United States Army after serving at Fort Benning and decided to stay in the Columbus area.

45. Richard Wells works as a juvenile probation and parole specialist for the Department of Juvenile Justice Community Programs.

46. Will and Amy White, husband and wife, are longtime residents of Muscogee County.

47. Will and Amy White have lived in their current house at 106 Turtle Creek Court for 11 years.

48. The Whites are building a newer, larger house at 5182 Midland Trace in Muscogee County.

Appendix C

49. Christopher E. Wightman and his wife Astrid Wightman are residents of Muscogee County.

50. Chris Wightman is a real estate agent.

51. Astrid Wightman is a nurse.

52. The Wightmans rented a home in Columbus for several years before purchasing their first home at 2847 17th Avenue in 1998.

Facts Regarding the Defendants

53. One or more of the defendants in this matter resides in Muscogee County.

54. The Columbus-Muscogee County Consolidated Government establishes the budget for county government operations each year and levies the mill rate necessary to fund the portion of the budget to be paid for by ad valorem tax. (Tax Comm'r Brochure).

55. The Muscogee County Board of Tax Assessors is responsible for determining taxability of property for ad valorem purposes, and for the appraisal, assessment, and equalization of all assessments within the County. (Tax Comm'r Brochure).

56. Lula Lunsford Huff, in her official capacity as Muscogee County Tax Commissioner, is responsible for performing all functions relating to billing, collecting, disbursing, and accounting for ad valorem taxes collected in the County. (Tax Comm'r Brochure).

Appendix C

57. The Muscogee County Board of Equalization is responsible for hearing and adjudicating administrative appeals as to values, denial of Homestead exemptions, and taxability of property values and assessments made by the Board of Tax Assessors. (Tax Comm'r Brochure).

Operation of the Homestead Freeze

58. The basis for ad valorem taxation is the fair market value of the property, which is established as of January 1 of each year. (Tax Comm'r Brochure).

59. The ad valorem tax is levied on the assessed value of the property, which, by law, is established at 40% of fair market value. (Tax Comm'r Brochure).

60. The amount of ad valorem tax is determined by the tax rate (millage rate). The Elected County Board of Education recommends the millage rate, which, with very few exceptions, must be levied for the school board by the City Council. One mill equals to $1 for each $1,000 of assessed value, or .001. (Tax Comm'r Brochure).

61. The current millage rate for County ad valorem tax is 40 mills or .040.

62. The Standard Homestead Exemption in the County is equal to $2000 on the State ad valorem tax and $13,500 on the County ad valorem tax. (Tax Comm'r Brochure).

63. The Standard Homestead Exemption in the County was increased between 1983 and 1993, in the following increments:

1983 — $6237; 1984 — $6798; 1985 — $7614; 1986 — $8604; 1987 — $9464; 1988 — $10,032; 1989 — $10,433; 1990 — $13,041; 1991 — $13,432; 1993 — $13,500.

64. The increases in the Standard Homestead Exemption between 1983 and 1993 reflected increases in the tax digest as calculated by the formula contained in 1980 Ga. L. 2009.

65. Additional homestead exemptions are available to certain homeowners in the County, including the Standard Elderly School Tax Homestead Exemption, the Standard Elderly General Homestead Exemption, the Disabled Veterans Homestead Exemption, and the Floating or Varying Homestead Exemption. (Tax Comm'r Brochure).

66. The Standard Elderly School Tax Homestead Exemption, the Standard Elderly General Homestead Exemption, and the Floating or Varying Homestead Exemption are available to certain homeowners above certain specified ages and with incomes below certain specified levels. (Tax Comm'r Brochure).

67. The Disabled Veterans Homestead Exemption is available to veterans with certain types of very serious disabilities. (Tax Comm'r Brochure).

68. For County taxpayers who qualify for the Standard Homestead Exemption, but none of the additional homestead exemptions specified in paragraph 66 above, ad valorem tax for County ad valorem tax purposes is calculated according to the following formula: The Frozen value is multiplied

times .40 (40%) to determine the assessed value for County purposes. The Standard Homestead Exemption (currently $13,500, which is the maximum limit) is then deducted from the assessed value. The resulting amount (assessed value less the homestead exemption) is multiplied by the millage rate (currently .040), to produce the amount of County ad valorem tax due.

69. Under the Homestead Freeze, some properties of comparable fair market values are valued for County ad valorem tax purposes at different amounts.

Inflation and Millage Rates

70. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 5.3 percent for the South Urban region in 1970.

71. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.2 percent for the South Urban region in 1971.

72. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.0 percent for the South Urban region in 1972.

Appendix C

73. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 6.4 percent for the South Urban region in 1973.

74. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 12.2 percent for the South Urban region in 1974.

75. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 9.7 percent for the South Urban region in 1975.

76. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 5.6 percent for the South Urban region in 1976.

77. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 6.6 percent for the South Urban region in 1977.

78. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 8.3 percent for the South Urban region in 1978.

Appendix C

79. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 11.4 percent for the South Urban region in 1979.

80. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 13.1 percent for the South Urban region in 1980.

81. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 10.7 percent for the South Urban region in 1981.

82. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 6.4 percent for the South Urban region in 1982.

83. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.3 percent for the South Urban region in 1983.

84. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.1 percent for the South Urban region in 1984.

Appendix C

85. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1985.

86. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 1.7 percent for the South Urban region in 1986.

87. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1987.

88. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.6 percent for the South Urban region in 1988.

89. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.4 percent for the South Urban region in 1989.

90. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the

Appendix C

Consumer Price Index, one of the most widely used measures of inflation, was 5.3 percent for the South Urban region in 1990.

91. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.9 percent for the South Urban region in 1991.

92. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.7 percent for the South Urban region in 1992.

93. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1993.

94. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.8 percent for the South Urban region in 1994.

95. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.0 percent for the South Urban region in 1995.

Appendix C

96. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.1 percent for the South Urban region in 1996.

97. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.1 percent for the South Urban region in 1997.

98. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 1.3 percent for the South Urban region in 1998.

99. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.0 percent for the South Urban region in 1999.

100. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 2000.

101. Tax District Number One of Columbus, Muscogee-County, Georgia ("District Number One") includes the majority of residential properties in the area.

Appendix C

102. The millage rate for District Number One, net levies no exemptions, was 44.15 in 1972.

103. The millage rate for District Number One, net levies no exemptions, was 46.69 in 1973.

104. The millage rate for District Number One, net levies no exemptions, was 45.07 in 1974.

105. The millage rate for District Number One, net levies no exemptions, was 46.28 in 1975.

106. The millage rate for District Number One, net levies no exemptions, was 47.68 in 1976.

107. The millage rate for District Number One, net levies no exemptions, was 35.30 in 1977.

108. The millage rate for District Number One, net levies no exemptions, was 38.47 in 1978.

109. The millage rate for District Number One, net levies no exemptions, was 36.79 in 1979.

110. The millage rate for District Number One, net levies no exemptions, was 33.29 in 1980.

111. The millage rate for District Number One, net levies no exemptions, was 38.93 in 1981.

112. The millage rate for District Number One, net levies no exemptions, was 38.16 in 1982.

Appendix C

113. The millage rate for District Number One, net levies no exemptions, was 35.65 in 1983.

114. The millage rate for District Number One, net levies no exemptions, was 35.71 in 1984.

115. The millage rate for District Number One, net levies no exemptions, was 35.41 in 1985.

116. The millage rate for District Number One, net levies no exemptions, was 33.33 in 1986.

117. The millage rate for District Number One, net levies no exemptions, was 36.00 in 1987.

118. The millage rate for District Number One, net levies no exemptions, was 36.48 in 1988.

119. The millage rate for District Number One, net levies no exemptions, was 33.78 in 1989.

120. The millage rate for District Number One, net levies no exemptions, was 37.47 in 1990.

121. The millage rate for District Number One, net levies no exemptions, was 38.51 in 1991.

122. The millage rate for District Number One, net levies no exemptions, was 39.89 in 1992.

123. The millage rate for District Number One, net levies no exemptions, was 40.08 in 1993.

Appendix C

124. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1994.

125. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1995.

126. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1996.

127. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1997.

128. The millage rate for District Number One, net levies no exemptions, was 40.00 in 1998.

129. The millage rate for District Number One, net levies no exemptions, was 40.00 in 1999.

130. The millage rate for District Number One, net levies no exemptions, was 40.00 in 2000.

131. The millage rate for District Number One, net levies no exemptions, was 40.00 in 2001.

Examples from 2000 Tax Digest

132. For the tax year 2000, approximately 1773 homesteads in the County had a then-current fair market value of $75,000 (plus or minus 2.5%), according to the fair market valuations assessed for state ad valorem purposes. (Source: 2000 Digest Table C.)

a. Of those homes with a fair market value of $75,000, twenty-seven had assessed valuations of $13,500 or less. With the homestead exemption set at $13,500, the owners of those twenty-seven homes owed no County ad valorem tax at all.

b. More than 110 other homes with fair market values of $75,000 had assessed valuations of less than $16,000. With the County homestead exemption of $13,500, the owners of those homes owed on average less than $100 in County ad valorem tax.

c. Approximately 840 homes with fair market values of $75,000 had frozen valuations equal to current values. Those 840 homeowners owed an average of $660.00 in County ad valorem taxes.

133. For the tax year 2000, approximately 616 homesteads in the County had a fair market value of $125,000 (plus or minus 2.5%). (Source: 2000 Digest Table D.)

a. Twenty-seven of those homesteads had frozen valuations less than 50% of their current fair market values, meaning that the owners of those homes owed on average less than $460.00 in County taxes. The total tax owed, however, also reflects the homestead exemption and the Governor's tax credit.

b. Almost 290 of the homesteads at the $125,000 fair market value level had frozen values equal to current fair market values. Those 290 homeowners would have

owed an average of $1460.00 in County ad valorem taxes, compared to 27 of their neighbors who owed less than $460.00.

134. In one census tract in Muscogee County (digest map page 011) are two homesteads, nos. 25 and 37. Homestead no. 25 has a fair market value of $80,162, and homestead no. 37 has a fair market value of $76,792. Due in part to the Homestead Freeze, however, the owner of homestead no. 25, who also benefits from a homestead exemption for the elderly, owes $0 in County ad valorem taxes, while the owner of homestead no. 37 owes $689 in County ad valorem taxes.

135. In another census tract in Muscogee County (digest map page 028) are two homesteads, nos. 91 and 92, located on the same street, one block away from each other. Homestead no. 91 has a fair market value of $104,857, and homestead no. 92 has a fair market value of $101,480. Due to the Homestead Freeze, however, the owner of homestead no. 91 owes $20.60 in County ad valorem taxes, while the owner of homestead no. 92 owes $837.36 in County ad valorem taxes.

136. In another census tract in Muscogee County (digest map page 029) are two homesteads, nos. 94 and 95, located within a few blocks of each other. Homestead no. 94 has a fair market value of $113,307, and homestead no. 95 has a fair market value of $111,805. Due to the Homestead Freeze, however, the owner of homestead no. 94 owes $0 in County ad valorem taxes, while the owner of homestead no. 95 owes $1249 in County ad valorem taxes.

Appendix C

137. In another census tract in Muscogee County (digest map page 033) are 30 homesteads, nos. 117-146, many located on common streets, within a few blocks of each other, with fair market values ranging from $54,000 to $59,600. Due to the Homestead Freeze, however, the owners of 19 of those homesteads owe $0 in County ad valorem taxes, while the owners of the remaining 11 homesteads owe between $208 and $401 in County ad valorem taxes. The owner of tract 117 benefits from the homestead exemption for the elderly and pays $3.70.

138. In another census tract in Muscogee County (digest map page 034) are three homesteads, nos. 148, 152, and 201. Homestead nos. 148 and 201 are located on the same street. Homestead no. 148 has a fair market value of $98,297, homestead no. 152 has a fair market value of $95,007, and homestead no. 201 has a fair market value of $98,017. Due in part to the Homestead Freeze, however, the owner of homestead no. 148, who also benefits from an H5 or VA Exemption, owes $0 in County ad valorem taxes, the owner of homestead no. 152 owes $118.06 in County ad valorem taxes, and the owner of homestead no. 201 owes $885.47 in County ad valorem taxes.

139. In another census tract in Muscogee County (digest map page 047) are two homesteads, nos. 241 and 245, located on the same street. Homestead no. 241 has a fair market value of $48,170, and homestead no. 245 has a fair market value of $47,815. Due to the Homestead Freeze, however, the owner of homestead no. 241, who also benefits from a homestead exemption for the elderly, owes $282 in County ad valorem taxes, while the owner of homestead no. 245 owes $82.23 in County ad valorem taxes.

Appendix C

140. In another census tract in Muscogee County (digest map page 083) are 12 homesteads, nos. 498-509, many located on common streets, with fair market values ranging from $84,000 to $91,800. Due to the Homestead Freeze, however, the owner of 1 of those homesteads owes $6.87 in County ad valorem taxes, 8 other owners owe less than $400 in County ad valorem taxes, and two homeowners owe more than $690.02 in County ad valorem taxes.

141. In another census tract in Muscogee County (digest map page 086) are five homesteads (nos. 524, 527, 529, 540, and 544) with fair market values of approximately $75,000. Due to the Homestead Freeze, however, the owners of those homesteads owe, respectively, $16.23, $5.51, $96.10, $451.61, and $519.10 in County ad valorem taxes.

142. In another census tract in Muscogee County (digest map page 095) are 35 homesteads (593-627), many located on common streets, with fair market values within 5% of $70,935. Due to the Homestead Freeze, however, the owners of 4 of those homesteads owe $0 in County ad valorem taxes, 10 homeowners owe less than $100 in County ad valorem taxes, 11 homeowners owe between $100 and $500 in County ad valorem taxes, and 10 homeowners owe more than $500 in County ad valorem taxes.

143. In another census tract in Muscogee County (digest map page 097) are two homesteads, nos. 631 and 635. Homestead no. 631 has a fair market value of $170,037 and homestead no. 635 has a fair market value of $163,710. Due to the Homestead Freeze, however, the owner of

homestead no. 631 owes $640.84 in County ad valorem taxes, while the owner of homestead no. 635 owes $1495.99 in County ad valorem taxes.

144. In another census tract in Muscogee County (digest map page 102) are two homesteads, nos. 771 and 781. Homestead no. 771 has a fair market value of $154,182 and homestead no. 781 has a fair market value of $153,617. Due to the Homestead Freeze, however, the owner of homestead no. 771 owes $786.61 in County ad valorem taxes, while the owner of homestead no. 781 owes $1775.07 in County ad valorem taxes.

145. The owner of one homestead in the County (parcel id. no. 069 019 011) with a fair market value of $283,625, owed $16.61 in County ad valorem taxes, $.25 less than was owed by the owner of another homestead in the County (parcel id. no. 047 020 006) with a fair market value of $48,432.

146. The Homestead Freeze produces many examples of homesteads with fair market values that vary by more than 100% but which are subject to identical amounts of County ad valorem tax:

a. Parcel id. no. 032 038 003, with a fair market value of $159,980, and whose owner benefits from the homestead exemption for the elderly, is subject to $14 of County ad valorem tax, while Parcel id. no. 040 010 008, fair market value of $57,080, is subject to $3.71.

b. Parcel id. no. 036 010 015, with a fair market value of $128,950, and whose owner benefits from the homestead exemption for the elderly, is subject to $175.96 of County ad valorem tax, while Parcel id. no. 015 020 005, fair market value of $54,150, is subject to $3.42.

c. Parcel id. no. 100 028 020, with a fair market value of $124,655, whose owner benefits from the homestead exemption for the elderly, is subject to $3.30 of County ad valorem tax, while Parcel id. no. 015 011 009, fair market value of $56,377, is subject to 219.23.

d. Parcel id. no. 017 031 009, with a fair market value of $170,285, is subject to $617.62 of County ad valorem tax, while Parcel id. no. 101 016 066, fair market value of $84,550, is subject to $608.25.

e. Parcel id. no. 068 059 001, with a fair market value of $289,760, is subject to $1,226.94 of County ad valorem tax, while Parcel id. no. 191 028 033, fair market value of $122,175, is subject to $1,210.26.

f. Parcel id. no. 170 001 007, with a fair market value of $451,517, is subject to $2,157.24 of County ad valorem tax, while Parcel id. no. 127 003 004, fair market value of $193,660, is subject to $1,770.10.

147. Under the Homestead Freeze, one homestead (parcel i.d. no. 180 019 020) with a fair market value of $139,945, is subject to a greater amount of County ad valorem tax than are homesteads with fair market values of $359,185 (parcel id. no. 182 002 044); $333,770 (parcel id. 025 015 002); $289,760

(parcel i.d. no. 068 059 001); $283,960 (parcel id. no. 068 060 001); and $283,628 (parcel id. no. 069 019 011).

148. Under the Homestead Freeze, a homeowner with a frozen value of $75,000 and a current value of $150,000 will pay the same amount of tax ($660.00) as the purchaser of a new home for $75,000, and will pay one-third of the tax paid by his new neighbor ($1860.00) who has just purchased a $150,000 home.

149. Persons who have owned the same homestead since 1983 enjoy the full benefit of an increase in their homestead exemption from $6237 to $13,500, purportedly to offset inflation, even though the valuation of their homes for County ad valorem purposes was frozen as of 1983 and therefore has not increased with inflation.

150. The amount of the inflation adjustment for a homeowner whose assessed value has been frozen since 1983 has increased from $6237 in 1983, to $13,500 in 1993, or a total increase of $7263.

The parties anticipate that there may be additional stipulations of fact.

Appendix C

Stipulated to:

s/ Thomas W. Curvin
Randolph W. Thrower (710900)
Teresa Wynn Roseborough (614375)
Thomas W. Curvin (202740)
Sutherland, Asbill & Brennan LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996
(404) 853-8000

George R. Ellis, Jr.
Ellis Gatewood Skipper & Farr, P.C.
410 West Lamar Street, P.O. Box 488
Americus, Georgia 31709
(912) 924-9316

Attorneys for Plaintiffs

s/ William M. Droze w/ express perm
Harold G. Clarke (128500)
Charles F. Palmer (559840)
William M. Droze (231039)
Troutman Sanders LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216
(404) 885-3000

Attorneys for Defendants

APPENDIX D — SUPPLEMENTAL STIPULATIONS OF THE PARTIES (SEPTEMBER 28, 2001) IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, GEORGIA

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

SUPPLEMENTAL STIPULATIONS

The parties hereby stipulate to the following additional facts in this matter, without necessity of further proof:

Appendix D

151. The Columbus-Muscogee County Consolidated Government (hereinafter the "County") collected a total of $26,299,050.68 in property taxes in fiscal year 1975. Of that amount, $12,922,007.01 were city collections and $13,205,997.40 were school collections.

152. The County collected a total of $28,092,611.81 in property taxes in fiscal year 1976. Of that amount, $14,143,444.41 were city collections and $13,768,838.01 were school collections.

153. The County collected a total of $29,475,561.61 in property taxes in fiscal year 1979. Of that amount, $10,460,097.64 were city collections and $18,782,996.78 were school collections.

154. The County collected a total of $29,872,117.05 in property taxes in fiscal year 1980. Of that amount, $11,798,984.81 were city collections and $17,823,764.94 were school collections.

155. The County collected a total of $30,706,984.94 in property taxes in fiscal year 1981. Of that amount, $10,048,682.33 were city collections and $19,139,261.61 were school collections.

156. The County collected a total of $37,388,577.63 in property taxes in fiscal year 1982. Of that amount, $15,440,934.61 were city collections and $20,397,600.72 were school collections.

Appendix D

157. The County collected a total of $38,235,553.19 in property taxes in fiscal year 1983. Of that amount, $15,603,064.68 were city collections and $21,048,448.87 were school collections.

158. The County collected a total of $38,525,765.83 in property taxes in fiscal year 1984. Of that amount, $15,340,629.80 were city collections and $21,497,908.30 were school collections.

159. The County collected a total of $42,076,355.06 in property taxes in fiscal year 1985. Of that amount, $16,999,275.11 were city collections and $23,327,525.13 were school collections.

160. The County collected a total of $45,700,179.63 in property taxes in fiscal year 1986. Of that amount, $17,810,894.07 were city collections and $26,054,611.96 were school collections.

161. The County collected a total of $48,041,332.19 in property taxes in fiscal year 1987. Of that amount, $19,278,905.17 were city collections and $26,911,956.39 were school collections.

162. The County collected a total of $54,003,924.49 in property taxes in fiscal year 1988. Of that amount, $16,999,275.11 were city collections and $23,327,525.13 were school collections.

Appendix D

163. The County collected a total of $92,134,489.38 in property taxes in fiscal year 1989. Of that amount, $58,328,506.61 were city collections and $31,912,230.18 were school collections.

164. The County collected a total of $63,344,251.44 in property taxes in fiscal year 1990. Of that amount, $25,496,679.86 were city collections and $35,850,980.24 were school collections.

165. The County collected a total of $69,279,740.72 in property taxes in fiscal year 1991. Of that amount, $25,264,612.81 were city collections and $42,292,910.62 were school collections.

166. The County collected a total of $76,386,577.79 in property taxes in fiscal year 1992. Of that amount, $29,360,821.10 were city collections and $45,113,601.18 were school collections.

167. The County collected a total of $83,617,776.64 in property taxes in fiscal year 1993. Of that amount, $32,915,127.44 were city collections and $46,783,936.86 were school collections.

168. The County collected a total of $88,832,233.74 in property taxes in fiscal year 1994. Of that amount, $35,421,976.61 were city collections and $49,195,800.03 were school collections.

Appendix D

169. The County collected a total of $94,104,424.50 in property taxes in fiscal year 1995. Of that amount, $38,553,023.77 were city collections and $51,258,791.02 were school collections.

170. The County collected a total of $98,002,161.71 in property taxes in fiscal year 1996. Of that amount, $40,427,427.80 were city collections and $53,355,439.62 were school collections.

171. The County collected a total of $101,815,368.68 in property taxes in fiscal year 1997. Of that amount, $41,542,581.40 were city collections and $56,071,739.68 were school collections.

172. The County collected a total of $98,938,321.67 in property taxes in fiscal year 1998. Of that amount, $40,675,953.24 were city collections and $55,209,805.91 were school collections.

173. The County collected a total of $108,481,832.33 in property taxes in fiscal year 1999. Of that amount, $45,313,131.04 were city collections and $58,928,570.79 were school collections.

174. The County collected a total of $119,256,968.94 in property taxes in fiscal year 2000. Of that amount, $49,923,891.60 were city collections and $64,455,735.22 were school collections.

175. The County collected a total of $122,551,876.38 in property taxes in fiscal year 2001. Of that amount, $51,238,746.90 were city collections and $66,319,910.75 were school collections.

176. A summary of the information underlying supplemental stipulations 151 through 175 is attached as Exhibit "dd" hereto, the authenticity of which is stipulated to by the parties.

177. In stipulations 151 through 175, for any given year, the "total" amount of property tax collections does not necessarily equal the sum of city collections and school collections. The "total" collections number also includes collections for the state property tax, bond indebtedness, and Bibb City collections.

178. Prior to the date of these stipulations, Plaintiffs William Feighner, Terrell Green, Lisa D. McNarry, Earle F. Lasseter, Sally Bork Lasseter, Faye Sherrill, Ron Sherrill, Ted Short, Penny Short, Carl J. Thomas, Connie Gray Thomas, Ernestine Wells, Richard Wells, Will White, Amy White, Christopher Wightman, and Astrid Wightman have not challenged the constitutionality of the Homestead Freeze before the County Board of Equalization.

179. Plaintiffs CM Tax Equalization Foundation, Inc., Hulette Booth, Bettie Ruth Haynes, and Moses Haynes do not own homestead property in Muscogee County and so have not received ad valorem property tax assessments subject to appeal to the County Board of Equalization.

180. Plaintiff Kenneth Henson, Jr., has challenged the constitutionality of the Homestead Freeze before the County Board of Equalization.

Appendix D

Stipulated to:

s/ Thomas W. Curvin
Randolph W. Thrower (710900)
Teresa Wynn Roseborough (614375)
Thomas W. Curvin (202740)
Sutherland, Asbill & Brennan LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996
(404) 853-8000

George R. Ellis, Jr.
Ellis Gatewood Skipper & Farr, P.C.
410 West Lamar Street, P.O. Box 488
Americus, Georgia 31709
(912) 924-9316

Attorneys for Plaintiffs

s/ William M. Droze
Harold G. Clarke (128500)
Charles F. Palmer (559840)
William M. Droze (231039)
Troutman Sanders LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216
(404) 885-3000

Attorneys for Defendants

Appendix D

[FOLD-OUT PAGE]

Muscogee County Tax Commissioner
Columbus, Georgia 31902-1441

P. O. Box 1441
Tag Office (706) 653-4208
Tax Office (706) 653-4211
FAX (706) 653-4207

Lula Lunsford Huff, C.P.A.
Tax Commissioner

FISCAL YEAR COLLECTIONS

FY 2001	$122,551,876.38
FY 2000	$119,256,968.94
FY 1999	$108,481,832.33
FY 1998	$98,938,321.67
FY 1997	$101,815,368.68
FY 1998	$98,938,321.67
FY 1997	$101,815,368.68
FY 1996	$98,002,161.71
FY 1995	$94,104,424.00
FY 1994	$88,832,233.74
FY 1993	$83,699,692.65
FY 1992	$76,386,577.79
FY 1991	$69,279,740.72
FY 1990	$63,344,251.44
FY 1989	$58,134,489.38
FY 1988	$54,003,924.49
FY 1987	$48,041,332.19
FY 1986	$45,700,179.63
FY 1985	$42,076,355.06
FY 1984	$38,525,765.83
FY 1983	$38,235,553.19
FY 1982	$37,388,577.63
FY 1981	$30,706,984.94
FY 1980	$29,872,117.05
FY 1979	$29,475,561.61
FY 1978	
FY 1977	
FY 1976	$28,092,611.81
FY 1975	$26,299,050.68

EXHIBIT
dd

Appendix D

[FOLD-OUT PAGE]

[FOLD-OUT PAGE]

TAX COMMISSIONER'S OFFICE

08/21/2001

FISCAL YEAR COLLECTIONS

	1976	1978	1977	1978	1979	1980	1981
TOTAL CITY COLLECTIONS	$12,922,007.01	$14,143,444.41			$10,460,087.84	$11,796,984.81	$10,048,882.33
TOTAL SCHOOL COLLECTIONS	$13,205,997.40	$13,768,838.01			$16,782,996.78	$17,823,764.94	$19,139,281.81
TOTAL STATE COLLECTIONS	$168,673.84	$178,474.25			$230,281.91	$247,859.48	$1,518,100.82
TOTAL BID COLLECTIONS							
BIBB CITY COLLECTIONS	$1,372.83	$1,855.14			$2,185.28	$1,907.82	$940.18
GRAND TOTAL COLLECTIONS	$26,299,050.68	$28,092,611.81	$0.00	$0.00	$29,475,561.81	$29,872,117.05	$30,706,984.94

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
TOTAL CITY COLLECTIONS	$16,440,934.81	$15,603,054.68	$15,340,829.80	$16,999,276.11	$17,810,894.07	$18,278,905.17	$23,948,703.09	$59,328,506.61	$25,496,679.86	$25,254,612.81
TOTAL SCHOOL COLLECTIONS	$20,397,606.72	$21,048,448.87	$21,467,906.30	$23,327,525.13	$26,054,611.96	$26,911,968.39	$21,121,222.10	$31,912,230.18	$35,850,960.24	$42,292,910.82
TOTAL STATE COLLECTIONS	$1,549,129.59	$1,562,941.60	$1,696,369.30	$1,746,433.38	$1,832,338.07	$1,849,087.87	$1,932,015.47	$1,891,834.62	$1,994,386.25	$1,720,802.96
TOTAL BID COLLECTIONS										
BIBB CITY COLLECTIONS	$912.80	$1,100.04	$858.43	$1,121.43	$2,337.53	$1,372.78	$1,983.83	$1,917.97	$2,205.09	$1,614.31
GRAND TOTAL COLLECTIONS	$37,388,677.83	$38,235,563.19	$38,525,765.83	$42,076,356.06	$45,700,179.63	$46,041,332.19	$54,003,924.49	$92,134,489.38	$63,344,251.44	$69,270,740.72

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
TOTAL CITY COLLECTIONS	$29,360,821.10	$32,915,127.44	$35,421,978.81	$38,553,023.77	$40,427,427.80	$41,542,681.40	$40,678,853.24	$45,313,131.04	$49,922,891.80	$61,238,746.90
TOTAL SCHOOL COLLECTIONS	$45,113,501.18	$48,783,936.86	$49,195,800.03	$51,258,791.02	$53,355,432.82	$56,071,738.98	$55,209,805.91	$58,928,570.79	$64,455,735.22	$68,310,910.75
TOTAL STATE COLLECTIONS	$1,810,971.38	$3,998,227.38	$4,213,973.08	$4,292,809.71	$4,219,294.29	$4,231,047.80	$3,052,562.52	$4,249,130.50	$4,483,321.04	$4,581,373.87
TOTAL BID COLLECTIONS									$424,021.06	$431,845.06
BIBB CITY COLLECTIONS	$1,184.15	$2,400.87	$584.02							
GRAND TOTAL COLLECTIONS	$76,386,577.79	$83,699,892.85	$88,832,233.74	$94,104,424.50	$98,002,161.71	$101,845,368.68	$98,938,321.67	$108,491,832.33	$119,286,968.94	$122,651,876.38

File budget-h

BEST AVAILABLE COPY

APPENDIX E — RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

Ga. L. 1981, pp. 1926-1927

MUSCOGEE COUNTY—VALUATION OF HOMESTEAD PROPERTY

Proposed Amendment to the Constitution
No. 76 (House Resolution No. 271)
A RESOLUTION

Proposing an amendment to the Constitution so as to provide for the valuation of certain homestead property in Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide for other matters relative to the foregoing; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Article VII, Section I, Paragraph III of the Constitution of the State of Georgia is hereby amended by adding at the end thereof the following paragraph:

"Subject to the conditions and limitations specified by law, homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1,

1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. The value of any improvements which are made after the base fair market value is established and which require a building permit to be obtained shall be added to the established base fair market value. The provisions of this paragraph shall apply with respect to valuation of any homestead property only so long as the property is actually occupied by the owner primarily as a homestead and is claimed and qualifies for the homestead exemption allowed under Georgia law. As used in this paragraph, homestead shall have the meaning specified by law for purposes of exemption from taxation, except that the term shall include not more than two acres of land upon which the residence is located or which immediately surrounds the residence. For the purposes of this paragraph, any change of title between spouses shall not be considered a sale, purchase, or change of ownership. The assessed value of such homestead property for the purposes of taxation as specified in this paragraph shall be the value determined pursuant to this paragraph multiplied by the percentage specified by law for assessment of tangible property; provided, however, in case of error, or in case incorrect information is provided, the Board of Tax Assessors may make correction to the January 1, 1983, value; or the value on January 1 of the first year when homestead exemption was allowed and claimed after January 1, 1983; or the value on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. This paragraph shall not affect state taxation."

Appendix E

Ga. Const. art. vii, § 1, para. 3(a)

(a) All taxes shall be levied and collected under general laws and for public purposes only. Except as otherwise provided in subparagraphs (b), (c), (d), and (e), all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Ga. Const. art. viii, § 6, para. 1(a)

(a) The board of education of each school system shall annually certify to its fiscal authority or authorities a school tax not greater than 20 mills per dollar for the support and maintenance of education. Said fiscal authority or authorities shall annually levy said tax upon the assessed value of all taxable property within the territory served by said school system, provided that the levy made by an area board of education, which levy shall not be greater than 20 mills per dollar, shall be in such amount and within such limits as may be prescribed by local law applicable thereto.

Ga. Const. art. x, § 1, para. 1

Amendments to this Constitution or a new Constitution may be proposed by the General Assembly or by a constitutional convention, as provided in this article. Only amendments which are of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people.

Appendix E

U.S. Const. art. iv, § 2, cl. 1

> **Section 2.** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U.S Const. art. iv, § 4

> **Section 4.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

U.S Const. amend. XIV, § 1

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.